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By the SAME HAND *that prepared the* Folio *Edition for the* PRESS.

PART III.

LONDON:
Printed for *D. Browne, G. Straban, W. Mears, R. Goſling,* and *F. Clay.* M.DCC.XX.

TRYALS

THE Tryal of Nathaniel Reading, Esq; for a Misdemeanour in endeavouring to Pervert the King's Evidence, and Suborn the Witness against Arundel, 31 Car. 2. 1679. p. 305

The Tryal of Thomas White, alias Whitebread, Provincial of the English Jesuits, William Harcourt, Rector of London, John Fenwick, Procurator of the Jesuits, John Gavan, and Anthony Turner, Coadjutors to the English Mission, for High Treason, the 13th of June, 31 Car. 2. 1679. p. 393

THE

TRYALS

Contain'd in

VOL. II. PART II.

The TRYALS *contain'd in* Vol. II. Part II.

The

ERRATA.

Page 340, Line 28, *read* as it will appear; *p.* 372, *l.* 7 *from Bottom*, *for* Court *read* Bench; *p.* 397, *l.* 24, *r.* effecting; *l.* 27, *f.* Power *r.* Peace; *p.* 403, *l.* 6 *fr. bot. f.* Proteſtant *r.* Catholick; *p.* 502, *l.* 3 *fr. bot. f.* one *r.* me; *p.* 516, *l.* 23, *f.* Breach *r.* Branch; *p.* 522, *l.* 9 *fr. bot. f.* either *r.* neither; *p.* 531, *l.* 12 *fr. bot. f.* Preſent *r.* Priſoners; *p.* 550, *l.* 15, *r.* effect; *p.* 553, *l.* 30, *r.* Lord High Steward; *p* 581, *l.* 9 *fr. bot. r.* Straford; *p.* 586, *l.* 1. *r.* ſays he to me; *p.* 589, *l.* 10 *fr. bot. f.* interpreted *r.* open'd; *p.* 608, *l.* 22, *f.* Money *r.* Letter; *p.* 619, *l.* 13, *dele the laſt* nor; *p.* 631, *l.* 10, *r.* changed; *p.* 645. *l.* 5 *fr. bot. f.* Car. *r.* Cur. *l.* 4. *f.* uſus *r.* verſus; *p.* 650, *l.* 13, *r.* oppos'd; *l.* 14, *r.* oblige; *p.* 652, *l.* 6. *r.* 1681; *p.* 656, *l.* 6 *fr. bot. r.* recedit; *p.* 661, *l.* 4 *fr. bot. r.* retained; *p.* 664, *l.* 15. *r.* Abatement; *p.* 668, *l.* 2, *f.* ſecure *r.* ſince, *and dele the Full-point*; *p.* 674, *l.* 26, *dele* &c. *p.* 684, *l.* 3 *fr. bot. r.* my Means; *p.* 696, *l.* 10, *r.* procure; *p.* 697, *l.* 18, *r.* ſucceſſively; *p.* 719, *l.* 16, *r.* Sir *M. Stapleton*; *p.* 742, *l.* 16, *r.* intercepted; *p.* 744, *l.* 21, *r.* Printer; *p.* 756, *l.* 23, *f.* Juriſdiction *r.* Indictment; *p.* 785, *l.* 18, *f.* accuſe *r.* amuſe; *p.* 791, *l.* 32, *r.* interrupt; *p.* 811, *l.* 26, *r.* with the; *p.* 815, *l.* 9 *fr. bot. r.* Statute; *p.* 828, *l.* 26, *f.* Proves *r.* Proceſs; *p.* 838, *l.* 1, *f.* have *r.* tread; *p.* 841, *l.* 4 *fr. bot. r.* libell'd; *p.* 847, *l.* 18 & 20, *r.* Aſſize; *p.* 848, *l.* 9 *fr. bot. f.* Geeze *r.* Geer.

ERRATA.

STATE TRYALS.

VOL. II. PART II.

The Tryal of Nathaniel Reading, *Esq; for a Trespass and Misdemeanour, before Commissioners of Oyer and Terminer, who sate in the Court of King's Bench in* Westminster, *the* 24th *of* April, 31 Car. 1679.

VOL. II. Page 253.

ON *Wednesday* the 16th of *April*, Part of the Commissioners met, and Sir *James Butler*, Attorney-General to the Queen, being the first Commissioner then present, gave the Charge to the Grand-Jury.

Charge to the Grand Jury.

He acquainted them, That upon the Address of the House of Commons, his Majesty had been pleas'd to give Orders for this Commission of *Oyer* and *Terminer*. And tho' several

veral other Offences were mention'd in the Commission, their Enquiries were to extend no farther than this Offence of Mr. *Reading*'s, contain'd in the Indictment he had in his Hand. And directed them, That if they had but probable Evidence of the Crime, they ought to find the Bill, becauſe their Preſentment and Verdict was not a Conviction, but in the Nature of an Accuſation, in order to bring the Priſoner to a fair Tryal.

Probable Evidence ſufficient for them to find the Bill.

Then the Witneſſes being ſworn, the Grand Jury withdrew, and about half an Hour after return'd, having found the Bill; after which, the Court adjourn'd to the 24th of *April*: When all the Judges, (except the Lord Chief Juſtice, who was out of Town) and the reſt of the Commiſſioners, met again at the Court of King's Bench. And, in the firſt Place, Sir *Francis North*, Lord Chief Juſtice of the Common Pleas, diſmiſs'd the Grand Jury from any farther Attendance. Then the Priſoner was ſet to the Bar and arraign'd.

Eleven Judges aſſiſt at the Tryal.

Sir *Fr North* Lord Chief Juſtice of the Common Pleas.

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The Indictment for a Miſdemeanour, in endeavouring to ſtifle the King's Evidence againſt the Popiſh Lords, by ſuborning the King's Witneſſes, and bribing them to contract and leſſen their Evidence againſt them.

The Indictment ſet forth, That whereas *Edward Coleman*, *William Ireland*, and *John Grove*, together with other falſe Traytors unknown, on the 24th of *April*, in the 30th Year of the King, did traytorouſly conſpire the King's Death, the Subverſion of the Government, and of the Religion Eſtabliſh'd, and to introduce the *Romiſh* Superſtition, for which Treaſons they had been duly attainted and executed. And whereas *William* Earl of *Powis*, *William* Lord Vicount *Stafford*, *John* Lord *Bellaſis*, *Henry* Lord *Arundel* of *Warder*, *William* Lord *Petre*, and Sir *Henry Titchburn*, Baronet, were, on the 30th of *November* laſt, lawfully accus'd of the aforeſaid Treaſons, and thereupon committed to the *Tower*; and thereof impeach'd by the Commons in Parliament. The Priſoner, *Nathaniel Reading*, well knowing the Premiſes, and being deviliſhly affected towards the King, his ſupream and natural Lord, and deviſing to ſubvert the Government and the Religion eſtabliſh'd, and to obſtruct and ſtifle the Diſcovery of the aforeſaid Treaſons, and to re-

tard

tard the Prosecution of the same against the said Lord *Powis*, Lord *Stafford*, Lord *Petre*, and Sir *Henry Titchburn*; did falsly, corruptly, and advisedly, against the Duty of his Allegiance, unlawfully solicit, suborn, and endeavour to perswade one *William Bedlow*, (whom the Prisoner knew had before given Information of the said Treasons against these Persons) to lessen, stifle, and omit to give in Evidence the full Truth, according to his Knowledge of the said Treasons against the said three Lords, and the said Sir *Henry Titchburn*, upon their intended Tryals, and to give such Evidence as the said *Nathaniel Reading* should direct; and to that Purpose did corruptly give to the said *William Bedlow* fifty six Guineas, and promis'd him, that within a certain Time he should receive divers other great Sums of Money and Rewards, for lessening, stifling, and omitting to give in Evidence the full Truth, according to his Knowledge, of the Treasons aforesaid, against the said three Lords and Sir *Henry Titchburn*, and for giving such Evidence as the said *Reading* should direct; to the Hindrance and Suppression of Justice, in Contempt of the Laws, and against the King's Peace, *&c.*

To which Indictment the Prisoner pleaded Not Guilty; and the Panel being call'd over, the Lord Chief Justice *North* directed, That Sir *John Cutler* should be Foreman of the Jury.

Mr. *Reading*. He is in Commission of the Peace, and therefore I desire he may be excus'd.

L. C. J. *North*. You cannot challenge peremptorily, it not being for your Life; and his being in Commission for the Peace, is no Cause of Challenge.

No peremptory Challenge but in capital Cases. Page 255.

Mr. *Reading*. I look upon this Indictment to contain expres Treason, and pray your Lordship's Judgement in it. I have had no Council, or so much as a Friend, or my Wife, suffer'd to come near me; and I have not been able to help my self, thro' the great Indisposition I have lain under, occasion'd by that barbarous and illegal Usage I have had; and may say, that I am the first *Englishman* that, in such Circumstances, was

The Prisoner complains of too strict and illegal a Confinement.

ever ſo uſed. But, my Lord, in my Apprehenſion, the Indictment charges me with a greater Treaſon than that which Mr. *Coleman* and the reſt who were executed, dy'd for; and if the Indictment be true, I am certainly a dead Man; I deſire your Lordſhip's Judgment therefore, if I may not be allow'd a peremptory Challenge.

One cannot be convicted of Treaſon on an Indictment where the Treaſon is not formally laid, tho' the Facts charg'd do amount to Treaſon.

L. C. J. *North.* If the Fact laid in the Indictment had been laid as an Overt-Act, for the evidencing the Imagination of your Heart, in compaſſing the King's Death, and the Deſtruction of the Realm, there it had been an Indictment of Treaſon; but ſince here is no Treaſon formally laid, nor the Word *Proditorie*, which is neceſſary in all Indictments of Treaſon; 'tis only a Miſdemeanour you ſtand charg'd with, which, I muſt tell you, is a great Favour to you. Therefore you muſt ſhew Cauſe if you challenge.

Mr. *Reading.* But after this Favour ſhew'd me, may I not be indicted for High Treaſon? And does there want any one Circumſtance of the Formality of an Indictment for High Treaſon, but that one of *Proditorie.*

L. C. J. *North.* It is not laid, That you did compaſs the Death of the King.

But Query, If he may not be indicted for Treaſon on theſe very Facts, after he has been convicted of a Miſdemeanour for them. See Mr. *Hampden's* Tryal.

Mr. *Reading.* Then I do not underſtand the Indictment; for it ſays, That *Coleman* and others did conſpire the Death of the King, *&c.* and farther, that the Lords therein mentioned were accus'd of the ſame Treaſon, and that I, *præmiſſa predicta ſatis ſciens*, did falſly, maliciouſly, and adviſedly do ſo and ſo; and were there no other Expreſſion, this makes me guilty of Treaſon, or at leaſt Miſpriſion of Treaſon.

L. C. J. *North.* You exerciſe great Elocution and Eloquence; but there is a Difference between the Knowledge of a Treaſon that is ſecret, and concealing it, and the Knowledge of a Treaſon that is diſcover'd: Indeed, the Concealing of a ſecret Treaſon, and endeavouring to ſtifle the Evidence, is Miſpriſion of Treaſon: But the knowing of this Treaſon, which all the World knows, is not laid as a Fault, but to aggravate the Fault afterwards charg'd. As for our Opinion, whether you

may be afterwards queſtion'd for Treaſon, we are not to give it you ; but you are to anſwer the Indictment as now it is. An Indictment of Treaſon or Miſpriſion muſt not be laid ſo, as that the Crime ſhall be collected out of the Matter of Fact only, but it muſt be formally laid. Page 256

Mr. *Reading*. My Lord, I would know, *if being deviliſhly affected to the King, my ſupreme and natural Lord, and intending to levy War in the Kingdom, and to change the Government, and alter the Religion*, &c. be not High-Treaſon.

L. C. J. *North*. We ſhall anſwer none of theſe Queſtions, but tell you, That no Judgment of Treaſon can be given againſt you upon this Indictment; therefore, if you have any particular Cauſe to challenge Sir *John Cutler*, ſhew it.

Mr. *Reading*. My Lord, I have ſeen him in Company with Mr. *Bedloe*, my Accuſer, and know there is no common Intimacy or Friendſhip between them.

L. C. J. *North*. Your Accuſers are Witneſſes for the King, and are neither to gain or loſe by the Tryal, and therefore cannot be preſumed to make any Party for your Conviction: If you can ſhew that Sir *John* hath ever given his Opinion that you are Guilty, that might be a Cauſe of Challenge.

Mr. *Reading*. My Lord, I did intend to have his Evidence for me. Juryman may be examin'd as a Witneſs.

L. C. J. *North*. That you may have, tho' he be ſworn.

Then Sir *John Cutler* and the reſt of the Jury were ſworn. After which,

Mr. *Edward Ward* open'd the Indictment; and Mr. Serjeant *Levinz* ſtated the Nature of the Offence: Then the King's Council were proceeding to prove the Attainder and Execution of *Coleman*, &c. and that the Lords had been impriſon'd and impeach'd for the Plot; but theſe Facts Mr. *Reading* admitted, and ſaid, He believ'd verily there never was a greater Plot laid in Hell than this, and that he abhorr'd the Thoughts of it, and had encourag'd the Diſcovery of it. Page 258. The Priſoner confeſſes, he believes there was a Plot.

Mr. *Bedloe* was call'd, and ſworn.

Mr. *Ward.* Pray acquaint the Court what Diſcourſe and Bargainings have been between you and Mr. *Reading*, for diminiſhing and leſſening your Evidence.

Bedloe's Evidence of the Priſoner's tampering with him to contract his Evidence againſt the Lords.

Mr. *Bedloe.* Mr. *Reading* was a Stranger to me, till Sir *Trevor Williams* brought me acquainted with him; he has been always very juſt in whatever I have employ'd him as to my private Concerns: And, as to the Plot, he has in all publick Companies preſs'd me to make a full Diſcovery, and has ſaid, That thoſe who were convicted and executed for it ſuffer'd juſtly; and indeed, he has never endeavour'd to ſtifle the whole Plot; only, in private he has ſpoken to me, to be cautious as to ſome particular People that he ſolicited for; not but that he believ'd them Guilty as well as the reſt, but deſir'd, I would not be ſo hot againſt them. And after he had made me eaſy, (as he term'd it) he deſir'd, I would make Mr. *Dugdale*, the other Evidence, eaſy too. And, ſays he, you gain your Point with the King, and with the Parliament and Kingdom if ſome ſuffer, and need not run at the whole Herd. Take my Inſtructions, I'll never adviſe you to any Thing that's ill, but I'll tell you how far you ſhall proceed, and if you can fix any Thing for them, you ſhall be ſure to be well gratify'd. The Gentlemen he moſt ſolicited me for, were my Lord *Powis*, my Lord *Petre*, my Lord *Stafford*, Sir *Henry Titchburn*, Mr. *Roper*, Mr. *Caryll*, and one *Cocker*, a Jeſuit; and he made me *Eaſy* too as to Mr. *Whitebread* and *Fenwick* the Day they were try'd; for I have enough againſt them; and I told my Lord Chief Juſtice, I had more to ſay when Time and Place requir'd it, (that is) when I had found out all that Mr. *Reading* intended to do, and I could make out ſuch Information as I now do; but I would not ſtifle that Treaty that was between him and me about the Lords in the *Tower*, which I knew was of greater Conſequence than two old Prieſts. —— A Day or two after my Lord *Danby* was ſent for by the Black Rod, he told

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told me, He had been with the Lords in the *Tower*, and they did think I was in a great Measure capable of serving them, and they would have an Account what I could say against them, that so they might view and correct it: And on *Friday* the 28th of *March*, I had promis'd to meet him at my Lodgings about this Business, and he came to my Lodgings, but I being engag'd in other Affairs, could not meet him that Night. On *Saturday* Morning the 29th, he came to my Lodgings again, where I had plac'd Mr. *Speke* and my Man ready against he came, (for I did not conceal any of our Conferences, but reveal'd them to some of the Members of the Privy-Council, to the Prince, and to my Lord *Essex*, and to several private Friends, who I knew would keep the Secret.) When he came into the Room he said, Is there no Body here that can over-hear us? I told him, No; but I had planted Mr. *Speke* behind the Hangings, and made a hollow Place in the Bed where I laid my Man, and cover'd him so smooth it did not appear any Body was there: I ask'd him, what the Lords in the *Tower* said, for I was to give in my Answer to the Secret Committee that Night. He desir'd me to put it off till *Wednesday*, and he would bring me their final Answer: At length I agreed to put it off till *Monday*; he said, Altho' he had not a full Answer yet as to what the Lords would do, I might expect a noble Reward; and he had Orders to draw blank Deeds to be sign'd in ten Days after their Discharge, both for Sums and Estates which they would settle upon me, and I should have a speedy Supply of Money as soon as it could be got in: That my Lord *Stafford* was cutting down Wood and selling it, and when he had rais'd the Money I should have it; but at present my Lord had not Money to defray the Charges of his Family: In the mean Time, he said, he had Orders to supply my present Occasions; and, indeed, I have had a great deal of Money of him, and sometimes he has given me Gold when I did not ask for it. But when I objected, that I had only a verbal Promise

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miſe from the Lords for all this, and could not rely upon that; he ſaid, He would engage his Soul and Life to make it good, tho' they did not think fit to give any Thing under their Hands as yet. Mr. *Reading* deſir'd me to let him ſee what Papers I had, (*viz.*) the Copies of what I had accus'd the Queen and the Lords of, that he might carry them to the Lords, and have their Anſwer: I pretended they were at my Mother's Lodgings, and went with him thither, to give the Witneſſes an Opportunity of coming out, but not finding the Papers there, we return'd to my Lodgings, where we found Mr. *Speke* and my Man, and aſking Mr. *Speke* how long he had been there? He ſaid, Ever ſince I went away. I deſir'd him to go before me to *Weſtminſter*, and I would follow him: And when he was gone, we fell to writing out what we had concluded upon; and when I inſerted Words that were any Thing home againſt the Lords, he would tell me the Law, and what would reach them, and then alter it. On the *Monday* after he brought a Copy to me of his own Hand-writing, far from the Words we had ſet down in the Paper on *Saturday*, which Writing took off the Charge of Treaſon wholly. The Paper he brought back was ten times ſhorter than that he had of mine, which was forty times ſhorter than that I had given in to the Secret Committee.

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Mr. J. *Wild.* Was the Agreement between you and Mr. *Reading*, that you ſhould ſwear what he ſhould direct you?

Mr. *Bedloe.* It was to what he and the Lords ſhould direct; he was to give me an Account what they would have me ſay; and he ſaid, That the Lords had corrected the Paper.

Mr. J. *Jones.* Shew him the Paper, I ſuppoſe he will own his Hand.

Mr. *Reading.* This is my Hand, and I did deliver this Paper to Mr. *Bedloe* before Mr. *Speke* in the Painted Chamber.

L. C. J. *North.* Have you not the firſt Paper here?

Mr. *Bedloe*. No; he carry'd it to the Lords, and I never had it again; this is the Paper corrected by the Lords, which I was to give in to the Secret Committee.

L.C.J. *North*. Tho' we cannot have the other Paper to compare with it, and shew how much the Testimony is lessen'd, yet let it be read, as an Evidence of the Fact in it self; for we shall expect a good Account from you, Mr. *Reading*, what you had to do to prescribe his Evidence in Writing. Page 261.

Then the Paper was read, containing the Evidence *Bedloe* should give in against the Lord *Stafford*, Lord *Powis*, and Lord *Petre*, which was principally Hearsay, and what would not have affected their Lives.

Mr. *Speke* was sworn.

He depos'd, That Mr. *Bedloe* daily acquainted him with the Treaties between him and Mr. *Reading*; and that on the 28th of *March* he met Mr. *Bedloe* at *Westminster*, who told him, He had appointed Mr. *Reading* to be with him in the Evening about the old Affair, and desir'd him to come to his Lodgings about seven a Clock, and he should be conceal'd in some private Place and hear their Discourse. That accordingly the Deponent came, but Mr. *Bedloe* not coming to his Lodgings, and Mr. *Reading* having been to enquire for him, and left Word, he would be there at seven the next Morning; the Deponent went away, but came to Mr. *Bedloe*'s Lodgings again between five and six the next Morning; and that himself and Mr. *Bedloe*'s Man being conceal'd (as Mr. *Bedloe* has before related), about seven a Clock Mr. *Reading* came in, and that he first ask'd, If any Body could over-hear him? and then fell upon the Discourse concerning what Money and Estates the Lords in the *Tower* had promis'd to settle upon Mr. *Bedloe* for his Services, in shortening and contracting his Evidence against them, and bringing them off from this Charge of High Treason, *as is before recited in Mr. Bedloe's Evidence.* That after this Conference was over, Mr. *Reading* and Mr. *Bedloe* went out, and return'd

Speke deposes, that he overheard the Bargain between *Bedloe* and the Prisoner. Page 262.

Page 263.

return'd in half an Hour, and finding the Deponent in the Chamber, Mr. *Bedloe* aſk'd him, How long he had been there? And that he anſwer'd, He juſt call'd on him as he was going to *Weſtminſter*, that Mr. *Reading* might not ſuſpect he had been there before, and heard their Dialogue: That Mr. *Reading* call'd for a Sheet of Paper, and went into the Bed-Chamber, and *Bedloe* told the Deponent, They were going to draw up what they had concluded on, that the Lords might ſee it and correct it; and then he was to deliver it in to the Secret Committee on *Monday*: That the Deponent accordingly ſaw Mr. *Reading* deliver the Writing to Mr. *Bedloe*, on *Monday*, in the Painted Chamber in *Weſtminſter*, and that Mr. *Bedloe* deliver'd it to the Deponent as ſoon as ever Mr. *Reading* had left him; and that the Deponent immediately went up into the Lord Privy-Seal's Room, where the Committee of Lords uſed to meet, and there Mr. *Wharton* and he read the Paper ſo deliver'd, being written by Mr. *Reading*'s own Hand.

Juryman. Did you ſee Mr. *Reading*'s Face at the Lodgings?

Mr. *Speke.* Ay, between the Door and the Wicket, but not in the Room.

L. C. J. *North.* Is this that Paper you ſaw him deliver to Mr. *Bedloe?*

Mr. *Speke.* I take it to be ſo.

Mr. *Reading.* I own I did deliver that very Paper to Mr. *Bedloe*, in the Painted Chamber, before Mr. *Speke*, and it is all my own Hand-writing.

Mr. J. *Wild.* Did you know Mr. *Reading*'s Voice, are you ſure, Mr. *Speke?*

Mr. *Speke.* I knew his Voice almoſt as well as his Perſon, and am very confident it was he.

Page 264. Then *Henry Wiggins*, Mr. *Bedloe*'s Servant, was ſworn.

Bedloe's Servant depoſes, he overheard the Treaty between the Priſoner and his Maſter.

He depos'd, That on the 29th of *March*, Mr. *Reading* came to his Maſter Mr. *Bedloe*'s Lodgings between ſeven and eight in the Morning; and that Mr. *Speke* and himſelf were hid in the Room, and heard the Diſcourſe between Mr. *Reading* and his Maſter, concerning the Evidence

his

his Master should give in against the Popish Lords, and the Rewards those Lords had promis'd him, by Mr. *Reading*, for contracting his Evidence, *as is before related in Mr.* Bedloe's *Evidence.* And that on the *Monday* following he saw Mr. *Reading* deliver the Paper produc'd in Court to his Master, Mr. *Bedloe*, in the Painted Chamber.

Juryman. Did you see Mr. *Reading* in your Master's Lodgings, as well as hear him talk?

Wiggins. When he came into the Room, the Rug was over my Head, and they spoke so softly that I could not hear them very well; but I put off the Rug without Mr. *Reading*'s perceiving me, and then I saw him and heard him speak plainly.

Sir *C. Levinz.* We shall trouble your Lordship with no farther Evidence, having prov'd it by three Witnesses.

L. C. J. *North.* Then, Mr. *Reading*, now is the Time to make your Defence.

Mr. *Reading's* Defence. He shews how he became concern'd for the Popish Lords.

Mr. *Reading.* My Lord, before I make my Reflections on the Evidence, I shall give an Account, how I came to wait on these Lords in the *Tower*, and Sir *Henry Titchburn* here mention'd. Mr. *Bulstrode*, a Gentleman of the Privy-Chamber to his Majesty, told me, That my Lord *Stafford* desir'd to be remember'd to me, and pray'd me to come to him, but I did not venture to go till I had acquainted some of the Lords of the Close Committee with it, (*viz.*) the Prince, my Lord Treasurer, and the Marquis of *Worcester*, and they told me, That my Profession did privilege me to go; and, God forbid, but that Respect should be shewn him and the rest of the Lords: Whereupon I did go, and acquainted the Lieutenant of the *Tower* with my being there, who invited me to Dinner, and my Lord *Stafford* din'd with us; and, after Dinner, my Lord *Stafford* took me with him to his Quarters, and desir'd me to move for his *Habeas Corpus.* I told him, I thought it not seasonable yet to do it. But he would give me a Fee, which was two Guineas. I was afterwards desir'd by several Lords to speak with Sir *Henry Goring* and Sir *John Gage*, who desir'd me to move for their *Habeas Corpus*'s; and I was sent

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for

for on the ſame Account to the King's Bench, to my Lord *Brudnel*, and others; and I did move here for their *Habeas Corpus*'s, and I was order'd to attend Mr. Attorney, to know if he would conſent to their being bail'd, which he would not tho' the Writs were granted, till he knew what their Accuſers could charge them with: Whereupon we did ſet down our Directions from Mr. Attorney about them, and went to Mr. *Bedloe* and Mr. *Otes*, to know what they could charge them with, and if they were eaſy as to their being bail'd; which Mr. Attorney being ſatisfy'd of from their own Mouths, did conſent to the Bailing of ſeveral of them. My Lord, this did occaſion my diſcourſing ſeveral Times with Mr. *Bedloe* and *Otes* concerning the Nature of the ſeveral Charges againſt the Gentlemen they had accus'd.

Then Mr. *Bulſtrode* appear'd, and was ſworn on Behalf of Mr. *Reading*.

He depos'd, That having been to ſee Sir *William Goring* in the *Tower*, my Lord *Stafford* deſir'd him to acquaint Mr. *Reading*, he ſhould be glad to ſee him, *as Mr.* Reading *had open'd*.

L. C. J. *North.* Mr. *Reading*, we know that the Acquaintance you had with *Bedloe*, and your going to the Lords, was in *Michaelmas* Term; and the *Habeas Corpus*'s, and the Matter of Bailing, was in *Hillary* Term, which ended the 12th of *February*; but the Facts charg'd upon you, are on the 28th, 29th, and 31ſt of *March*, therefore apply your ſelf to theſe.

Sir *Trevor Williams* appearing, Mr. *Reading* deſir'd he might be ſworn.

Mr. *Reading*. I deſire to know if he did not recommend Mr. *Bedloe* to me about his Pardon?

Pag. 266. Sir *Tr. Williams*. I had a great Opinion of Mr. *Reading*'s Skill in the Law, and Mr. *Bedloe* being a Countryman of mine, I was deſirous his Pardon ſhould be as perfect as might be, and therefore recommended him to Mr. *Reading*, and deſir'd he would be careful about it.

Mr. *Sa-*

Mr. *Sacheverel* appear'd.

He said, They had receiv'd a Letter from Mr. *Reading* in the House of Commons, desiring that he might have some Papers that were proper to his Defence, which he had deliver'd in to the Secret Committee; he said, He suppos'd he meant a Paper about Mr. *Prickman*, and a Letter concerning him; as also a Paper containing the State of the Evidence against the Lords, which he pretended Mr. *Bedloe* had dictated to him; that the last Mr. *Clare* had, and the other two the House had order'd him to bring.

Mr. J. *Wild*. Mr. *Reading*, you are a Lawyer, pray speak to the Point you are charg'd with, your Tampering with *Bedloe* to take off his Evidence against those Lords.

Mr. *Reading*. My Lord, when Mr. *Bedloe* had his Pardon a drawing, and was ask'd by the King and my Lord Chancellor, Who was his Friend or Council? He said, I was his Friend and Council, recommended by Sir *Tr. Williams*: And his Majesty asking, what Advice I had given him? He answer'd, I had bid him speak the Truth with Courage, and spare no Man where he could justly charge them, and trust to God and his Majesty for a Reward. And the King reply'd, The Advice was honest, and bad him follow it.——— What I have done in this Matter, I did in Friendship to him, and have supply'd him with several Guineas; with one or two, when he told me he wanted Bread. He has acknowledg'd the Services I had done him, and was pleas'd to tell me when he receiv'd the 500 *l*. Reward upon the Proclamation, he would give me a third Part for the Services I had done him, and repay me whatever I had lent him, and the Fees that were due to me. ——— My Lord, in farther Discourse with Mr. *Bedloe* he told me, He was overjoy'd his Majesty had taken off the Confinement they were under; for as yet Mr. *Otes*, and *Dugdale*, and he, had not Liberty of speaking to one another, but now, he said, they could lay their Stories together. He said also, That he had several Witnesses who would swear whatever he bid them; and

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and confeſs'd, He had not done well in ſome Things, particularly in charging Mr. *Griffith*.

He is told, he muſt not aſperſe the King's Witneſſes, unleſs he bring Proof of what he charges them with.

L. C. J. North. It is not fair to go on thus. Either call Mr. *Bedloe*, to depoſe upon Oath what he told you, or produce other Witneſſes to prove it, if you think it material: But you muſt not think to go on with ſuch Diſcourſes as theſe; I confeſs, this Kind of Defence is artificial enough, but we muſt hold you to the Point. What can you ſay to the Facts of the 28th, 29th, and 31ſt of *March*? All other Things ſignify nothing.

Mr. *Reading*. If I underſtand my Defence, nothing can be more material; and I deſire Mr. *Bedloe* would anſwer upon his Oath, Whether I did not deſire him to ſpeak the Truth; but I bid him remember, this Land groan'd for the ſhedding innocent Blood already, and if he went on to add Sin to Sin, and charge Men unjuſtly, to take away their Lives, poſſibly he might ruin the Nation inſtead of preſerving it.

Mr. *Bedloe*. I own, in publick he gave me ſuch Advice, and that he has charg'd me with doing Wrong, particularly to Mr. *Griffith*; but that happen'd thro' the Miſtake of thoſe who took up the Uncle for the Nephew, and I'm ſorry for it.

Mr. *Reading*. Did not he give you a Gold Watch?

Mr. *Bedloe*. Yes; and I acquainted the Committee and the Prince with it preſently.

Mr. J. *Wild*. Mr. *Bedloe*, you receiv'd ſeveral Sums of Money of Mr. *Reading*; did he lend or give 'em you?

Mr. *Bedloe*. I wonder he ſhould ſay I wanted Bread, when I had five Diſhes of Meat allowed me every Day.

Mr. J. *Atkins*. And you had large Sums of Money given you?

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Mr. *Bedloe*. As to the Money I receiv'd of Mr. *Reading*, he ſaid, He had Orders from the Lords to let me have what Money I came for, and and ſometimes he gave me Money when I did not aſk it.

Mr. J. *Wild*. And upon that Occaſion?

Mr. *Bed-*

Mr. *Bedloe.* I understood it so; and as to my paying him again, I confess, he was to have 100 *l.* *per Annum* out of every 1000 *l.* a Year of my Reward.

The Prisoner to have 100 *l. per Ann.* out of every 1000 *l. Bedloe* got.

Mr. *Reading.* Pray, Sir, did I directly or indirectly desire you to lessen a Syllable of your Evidence that was true?

Mr. *Bedloe.* Two Witnesses have prov'd that already, and I do, upon my Oath, declare, That I was to have such a Reward for bringing off the Lords from what they were charg'd with; and you said, you had Orders to draw blank Deeds.

Mr. *Reading.* My Lord, No Man ought to be accused but by lawful Witnesses, and I am, in your Lordship's Judgment. Whether Mr. *Bedloe* and the others be such? Mr. *Speke,* by his own Confession, is an Eves-dropper, which is a Crime in Law: And, for Mr. *Bedloe,* I desire he may answer upon Oath, Whether he did not lay in Coal and Billets behind the *Palsgrave*'s-Head Tavern, and by *Charing-Cross,* in order to fire the City of *Westminster?*

Bedloe owns, he had been engag'd in a Design to fire the City.

L. C. J. *North.* If you ask him Questions to make him accuse himself, we must oppose it: And if he have his Pardon, that sets him right against all Objections; so that take it either Way, such Questions ought not to be ask'd.

But the Prisoner is told, he must not ask him any Questions to make him accuse himself.

Mr. *Reading.* The King's Pardon doth remit the Punishment, but still it may be objected to invalidate his Testimony. Page 269.

L. C. J. *North.* It doth so far set him right, that you shall not make him calumniate himself; and as for the Eves-dropping which you, from a Term in the Law, would cast as a Scandal on Mr. *Speke,* I take it to be for his Credit, that he should be pitch'd upon for this Purpose, as a Person whose Credit was unquestionable.

Mr. J. *Atkins.* Your charging these Witnesses as Eves-droppers, is no Aspersion at all; for it was prudent and necessary for Mr. *Bedloe* to take this Course, for if he had not done it, and these Practices had been otherwise discover'd, he had been in the same Danger you are now.

Mr. J.

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Mr. J. *Wild.* You disgrace your Profession in making so weak a Defence. —— What do you say to the Discourse that pass'd between you at Mr. *Bedloe*'s on the *Saturday* Morning?

The Prisoner avers, that *Bedloe* first propos'd the Matter to him.

Mr. *Reading.* My Lord, he propos'd the Business first to me: He bid me tell the Lords *Stafford*, *Powis*, and *Petre*, that if they did not secure him a good Reward, he would give such an Evidence as should deprive them of their Lives, and that he had other Witnesses to back him; but if they would give him some suitable Reward, his Testimony should do them no Hurt at all.

L. C. J. *North.* Will the Jury believe your bare Assertion?

Sir *J. Butler.* I desire to know, if fifty six Guineas were paid by Mr. *Reading* to Mr. *Bedloe*, to induce him to lessen his Evidence against the Lords?

Mr. *Bedloe.* I had sometimes two Guineas, sometimes more, at several Times, which might amount to that Sum at least, but not any such great Sum together.

Mr. *Reading* call'd Mr. *Palmer*, who was sworn.

Mr. *Reading.* Pray, Sir, give an Account of Mr. *Bedloe*'s borrowing Money of me that *Tuesday* Morning I was clapp'd up.

Mr. *Palmer.* Mr. *Bedloe* having twenty Shillings in his Hand, Mr. *Reading* came in; to whom *Bedloe* said, I have no more than this, and this I borrow'd of my Mother; then Mr. *Reading* gave him two Guineas, and Mr. *Bedloe* said, *God-a-mercy, thou art an honest Man, and my chief Fountain.*

Mr. J. *Atkins.* This was when you saw Mr. *Bedloe* was for your Turn, and therefore makes against you.

Mr. *Reading.* Did not *Bedloe* confess, he had laid in Fuel to burn the City of *Westminster?*

Mr. *Bedloe.* I acknowledge it, and it was Part of the Treason the King pardon'd.

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Mr. *Reading.* Did I ever know *Nicholas Jordan* till you acquainted me with him? Had not he some Estate in *Gloucestershire?*

Mr. *Bed-*

Mr. *Bedloe*. I own I told Mr. *Reading*, I would have such an Estate of my Lord's in *Glocestershire* settled upon me; and he said, He had Orders to draw Blank Deeds for the conveying of that Estate, to be sign'd in ten Days after his Discharge.

Bedloe owns he pitch'd upon an Estate in *Glocestershire* for his Reward.

Mr. *Reading*. *Bedloe* said, For the other Witnesses, he would do well enough with them, if my Lord would give him his Reward. And I went to my Lord *Stafford* in the *Tower*, and ask'd him, If he knew this *Jordan*? and he said, He was a Tenant of his, but he would not give *Bedloe* Six-Pence, for he valued himself upon his Innocence and the Infamy of his Accusers, and he should look upon it as the greatest Part of his Guilt, if he gave him any Thing; but he said, I had been often at the *Tower*, and he was indebted to me for Fees, and he would give it me under his Hand, to pay me 200 *l.* (for the Pains I had taken and should be at in his Affairs) to be paid within ten Days after his Enlargment; but remember, he said too, I will not directly or indirectly promise *Bedloe* Six-Pence. My Lord *Powis* said the same; but added, if *Bedloe* would forbear to charge him unjustly, as he had hitherto done, he should find he would do by him like a Gentleman, when he was acquitted.

The Prisoner clears the Popish Lords of any Design to bribe *Bedloe*.

L. C. J. *North*. You have said enough, Mr. *Reading*.

Mr. J. *Wild*. This is against your self.

Mr. *Reading*. I can't help it, I thought I was bound to do it to save innocent Blood. And, my Lord, I came back to Mr. *Bedloe*, and I did ask him, If there was any Body in the Bed by him? and he ask'd me what the Lords said, and, I think, I told him in Terms very little different from what I have said now. And as to the Thousand Pounds, and drawing the Writings, I never open'd my Lips of such a Thing.

He avers, that his treating with *Bedloe* was to prevent the Shedding of innocent Blood.

L. C. J. *North*. What, not concerning the Estate in *Glocestershire*?

Mr. *Reading*. That was for the securing the 200 *l.* to me, *pro Consilio impenso & impendendo*, and I did tell *Bedloe*, My Lord offer'd me a Letter,

promiſing to ſecure the Payment of it to me out of the Eſtate in *Glouceſterſhire.*

Mr. J. *Wild.* Why ſhould you diſcourſe with Mr. *Bedloe* about your Penſion?

Mr. *Reading.* My Lord ſaid, When I had the 200 *l.* I might diſpoſe of it as I ſaw fit. Upon this *Bedloe* anſwer'd, He would take their Lordſhips Words, and he would put in ſuch an Evidence as I ſhould write down and he would dictate to me: And when he had dictated and I had read it to him, he afterwards read it himſelf, and ſaid, This is what I think is kind to them, and what I can come off well enough in ſaying; and bid me take it to the Lords, and have their Anſwer. And this is that very Paper I wrote in *Bedloe*'s Chamber, as it was dictated by himſelf, and I carry'd it to the Lords; and my Lord *Stafford* ſaid, He found Mr. *Bedloe* began to be honeſt. I ſhew'd it to my Lord *Petre*, and he gave me five Guineas, before which Time I had not a Penney of his Money; and I was with my Lord *Powis*, but being in Haſte then, I did not ſhew it him. On the *Monday* Morning I came to Mr. *Bedloe*'s, and he not being within, I was going to the Houſe of Lords, and, in my Way, met him in the Painted Chamber, with Mr. *Speke*; and he deſir'd me to deliver a Copy of this Paper to them to write it out, and I did ſo. That which I deliver'd to *Bedloe* before Mr. *Speke*, was in the firſt Perſon, the other was in the third, and I believe there is no other Difference between them. After this *Bedloe* receiv'd his 500 *l.* and promis'd to pay me all next Morning if I would come to his Chambers, which I did, but miſſing him I came on to *Weſtminſter*, and went up to the Speaker's Chamber to talk with my Clients, but found the Door faſten'd, and I was arreſted.

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Bedloe receives 500 *l.* of the Government for his Diſcovery.

Then Mr. *Bedloe* ſhew'd both the Papers.

Mr. *Bedloe.* Theſe are fairly without interlining, but there were forty Interlineations in that that was written in my Chamber.

Mr. *Reading.* I ſpeak it in the Preſence of God, this is the very Paper I did write out, and there was no other Interlineations in it than what you

ſee;

see; it never went out of my Hand, from the Time I wrote it in *Bedloe*'s Chamber, till I shew'd it the Lords in the *Tower*, and afterwards I deliver'd it to Mr. *Sacheverel*; there was no other Paper upon my Word.

Mr. J. *Wild.* And can you justify carrying the King's Evidence to the Prisoners, if it was no more?

Mr. *Reading.* I thought it no Crime, and did it to prevent Perjury and shedding innocent Blood.

L. C. J. *North.* Will you take upon you thus to impeach the Justice of the Nation? Are not you a Lawyer, and know, that no Man may be of Council for a Prisoner in Treason or Felony, till he is assign'd? And how will you justify your self in carrying the King's Evidence to the Lords? You have spoil'd your Cause, and confess'd as much as amounts to the whole Charge.

No Man ought to be Council in Treason or Felony, till he is assign'd. Page 273.

Then Mr. *Reading* produc'd a Protection that *Bedloe* had given to one Mr. *Prickman*, a Merchant who was broke, under Pretence of being one of his Witnesses; and said, When he found Mr. *Bedloe* had these Tricks, and used such indirect Means, he thought he should do the King and the Nation good Service, if he could prevent his spilling innocent Blood.

L. C. J. *North.* If you had suspected *Bedloe*'s Honesty, you should have gone to the King's Council or the Secret Committee; but for you to take upon your self to do this, shews, it is but a plausible Excuse to cover your corrupt Dealing.

Mr. *Reading.* My Lord, I have several Witnesses to prove, that I was resolv'd to give his Majesty, or the Secretaries, an Account of it at the Time I was taken.

L. C. J. *North.* This is nothing to the Purpose; the Court has had a great deal of Patience.

Mr. *Reading.* I have done, my Lord.

Then the Lord Chief Justice *North* summ'd up the Evidence, and told them, That Mr. *Reading* was indicted for endeavouring to suborn Mr. *Bedloe* to lessen his Evidence against the impeach'd Lords, which had not only been prov'd by undoubted

The L. C. J. *North* directs the Jury.

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doubted Testimony, but he had confess'd the whole Charge in the Indictment; and order'd them to go together and consider of it.

The Jury can have no Papers out of Court that are not under Seal.

Mr. J. *Wild* observing a Paper in Sir *John Cutler*'s Hand, told him, The Jury must have no Papers out of Court but what were under Seal; but Sir *John* answer'd, It was only a Paper with the Names of the Jury. After which the Jury with-

The Prisoner convicted.

drew, and soon after brought the Prisoner in guilty of the Offence whereof he stood indicted: And then the Court adjourn'd till two a Clock.

The Court being set in the Afternoon, the Lord Chief Justice *North* made a Speech, aggravating the Defendant's Offence as he was a Council; one who ought to be a Man of Knowledge, and a Minister of Justice, to assist the Court wherein he pleaded; and said, He thought the Court ought to shew a more than ordinary Severity against such a one. And then he pronounc'd

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His Sentence.

the Judgment, *That he should be fined* 1000 l. *and be imprisoned for a Year, and that upon the* Monday *following he should be set in the Pillory for the Space of an Hour, in the Palace-Yard in* Westminster; but said, The Offence being such as had enrag'd the People to that Degree that he might be in Danger of his Life, they had order'd the Sheriff and the Justices of the Peace, that the Peace should be kept so, that no other ill Consequences might happen to him, but only the Shame and Infamy he was condemn'd to, which he thought he deserv'd as well as any Man that ever was convicted.

He is set in the Pillory.

And on *Monday* following, Mr. *Reading* was set in the Pillory according to his Sentence.

The TRYAL of THOMAS WHITE, alias WHITEBREAD, Provincial of the Jesuits in England, WILLIAM HARCOURT, pretended Rector of London, JOHN FENWICK, Procurator for the Jesuits in England, JOHN GAVAN, alias GAWEN, and ANTHONY TURNER, for High-Treason, the 13th of June, 31 Car. 2. 1679.

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THE Prisoners were try'd at the Sessions House in the *Old-Baily*, by Virtue of a Commission of Oyer and Terminer, directed to all the twelve Judges and others. And one *James Cocker* was also set to the Bar, in order to be arraign'd with the rest of the Prisoners.

All the 12 Judges in the Commission of Oyer and Terminer.

James Cocker preferr'd a Petition to the Court, that his Tryal might be put off, having had Notice of Tryal but the Day before.——— The Lord Chief Justice told him, He should hear the Indictment read, and if he could name any Witnesses that could be serviceable to him hereafter, the Tryal should be put off.

Sir *Geo. Jefferies.*

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Mr. *Recorder.* My Lord, one Mrs. *Ireland* came to me on *Saturday* Night on Behalf of all the Prisoners, and said, There were some Witnesses that would not appear unless they had some Order. I bid her bring me a Note of the Witnesses Names they desir'd, and they should have all the Assistance the Court could give them; but I have never heard from the Gentlewoman or the Prisoners since.

Then the Indictment was read.

The Indictment set forth, That *Thomas White*, alias *Whitebread*, of the Parish of St. *Giles's in the Fields*, in the County of *Middlesex*, Clerk; *John Fenwick*, *William Harcourt* alias *Harrison*, *John Gavan*, *Anthony Turner*, and *James Cocker*, of the same Parish and County, Clerks; as false Traitors to their supreme and natural Lord King

The Indictment for High Treason in contriving the Death of the King, the Subversion of the Government, Religion, &c.

Charles the Second, not weighing the Duty of their Allegiance, *&c.* did, with divers other falſe Traitors, to the Jurors unknown; on the 24th of *April* in the 30th Year of the King that now is, adviſedly, maliciouſly, and traitorouſly compaſs, imagine, and intend to ſtir up Sedition and Rebellion, and to procure a miſerable Slaughter of the King's Subjects, to depoſe the King, and to bring him to Death, to ſubvert the Government, and Religion eſtabliſh'd, and to levy War againſt the ſaid King. And that, in order to accompliſh their ſaid traitorous Imaginations and Purpoſes, they, the ſaid *Thomas White*, &c. did, on the ſaid 24th of *April* in the Pariſh and County aforeſaid, traitorouſly aſſemble, conſult, and agree to kill his Majeſty, to change the Religion eſtabliſh'd, and introduce the Romiſh Superſtition, and ſubvert the Government; and that *Thomas Pickering* and *John Grove* ſhould be the Perſons who ſhould murder the ſaid King: And that it was farther agreed by the Priſoners, that they would ſay a certain Number of Maſſes for the Soul of the ſaid *Pickering*, and that *Grove* ſhould have a Sum of Money for his Reward. And the Indictment farther ſets forth, That the Priſoners did take the Sacrament to conceal the ſaid Treaſons: And alſo, That at the Time and Place aforeſaid, they did perſwade and excite four other Perſons, to the Jurors unknown, to kill the King. All which was contrary to their Allegiance, the King's Peace, his Crown, and Dignity, *&c.*

The Overt-Acts. Page 277.

Whitebread. My Lord, upon the 17th of *December* I was try'd for the ſame Thing; the Jury was charg'd with me, and the Evidence given againſt me, and found inſufficient, and then the Jury was diſmiſs'd without giving a Verdict. I deſire I may have Council to adviſe me, Whether I ought to plead a ſecond Time; for I am inform'd, that no Man can be put in Jeopardy of his Life a ſecond Time for the ſame Cauſe: I deſire the Record may be view'd. And he quoted the Caſe of *Seger* the 31 *Eliz.*

Whitebread objects, That he had been try'd before for the ſame Offence, and the Jury were diſmiſs'd without any Verdict.

Sir Will. Scroggs. L. C. J. There is no Entry made of it, for it was no Tryal, there having been no Condemnation or Acquittal. *White-*

Whitebread. But I ask, Whether I ought not to have been condemn'd or acquitted?

L. C. J. No; It is in the Discretion of the Court to discharge the Jury, where any Accident happens: As where a Man is indicted for Murder, and a Witness happens to be taken ill, &c. they may discharge them, or else the Murderer might escape.

The L.C.J. avers, It was in the Discretion of the Court to discharge the Jury without taking a Verdict.

Whitebread. That is not my Case.

L. C. J. *North.* The Jury were discharg'd before they consider'd any Thing concerning you; and, in my Experience, I have known it often done.

Then the rest of the Judges were consulted.

L. C. J. All the Judges of *England* are of the same Opinion.

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All the Judges agree, that this was Law. But *Query*, for it has been deny'd to be Law ever since.

Mr. *Recorder.* 'Tis the constant Practice.

Whitebread. I am satisfy'd. —— Then he pleaded *Not Guilty.*

Fenwick. My Case is the same with Mr. *Whitebread's*; and I suppose we were not proceeded against, because *Bedloe*, the second Witness, declar'd, He had nothing against us; otherwise we had suffer'd with the rest; so, I suppose, we ought to have been discharg'd.

Fenwick makes the same Objection, but is over-rul'd.

L. C. J. The Jury did not consider, whether you were Guilty or not; and we prevented your making any Defence, because we did not think it a sufficient Charge.

The Court having over-rul'd this Matter, the Prisoners severally pleaded *Not Guilty*; and *Cocker* naming a Witness, who was a material Evidence for him, and was thirty Miles out of Town, the Court respited his Tryal till the next Day, but told him, They could not put it off till *Monday*, as he desir'd, because it was the Essoin Day of the ensuing Term, and then their Commission would be out.

The Prisoners plead *Not Guilty*; *Cocker's* Tryal is put off.

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Then the Jurors were call'd, in order to try the other five Jesuits, who made no other Challenges, than only in general to those who had pass'd upon the former Tryals for the same Facts they stood charg'd with.

The Jury being sworn and charg'd with the Prisoners, Mr. *Belwood* open'd the Indictment.

Sir *Cr. Levins* obſerves, 'Tis Treaſon for a Subject to take Popiſh Orders.

Sir *Creſwel Levins* obſerv'd, That the Priſoners were all Popiſh Prieſts, and as ſuch were Guilty of High-Treaſon by the 27 *Eliz.* and ought to die for that; but that they were now charg'd with a Treaſon of a blacker Nature, and ſo would not have the Satisfaction of ſaying, They dy'd for their Religion: And that altho' the aboveſaid Statute had been made near one hundred Years, yet there had been very few Examples of Prieſts who had ſuffer'd purely for their Religion, (tho' many had ſuffer'd for the ſame Crimes the Priſoners at the Bar were charg'd with) and that on the contrary, in Popiſh Countries, they had murder'd the Proteſtants by Thouſands, without Law or Juſtice, as at *Mirendol*, *Paris*, in *Ireland*, and *Piedmont*. Then he proceeded to ſhew the Nature and Courſe of the Evidence.

Tho' few had ſuffer'd on that Account.

And ſhews the cruel Uſage of the Proteſtants Abroad.

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After which, the Witneſſes were call'd, and firſt, Mr. *Otes* was ſworn.

Otes. My Lord, I may have Occaſion for the other Witneſſes, I deſire they may be call'd in.

Gavan. That may be inconvenient, he may inſtruct his Witneſſes.

L. C. J. *North.* We will take Care of that.

Then the other Witneſſes were ſent for.

Sir *Creſwel Levins.* Pray, Mr. *Otes*, what can you ſay to theſe Gentlemen the Priſoners?

Otes's Evidence of the Conſult of the Jeſuits at the *White Horſe*, *April* 24, 1678.

Otes. It was known to us at St. *Omer*'s, that the Priſoner, Mr. *Whitebread*, was conſtituted Provincial in *December* laſt was Twelve Month; and, by his Authority, he order'd Father *Conyers* to preach in the Sodality of the *Engliſh* Seminary there, on St. *Thomas* of *Becket*'s Day; and that in his Diſcourſe he ſhould maintain, That the Oaths of Allegiance and Supremacy were Heretical, Antichriſtian, and Deviliſh; which he accordingly did. That Mr. *Whitebread*, in *January* or *February*, wrote to St. *Omers*, That Archbiſhop *Talbot* had written to him from *Ireland*, that ſeveral Thouſands of *Iriſh* were ready to riſe when the Blow ſhould be given in *England*; and Mr. *Whitebread* ſaid, He hoped it would not be long e'er it was given. [By the Word *Blow*, we underſtood the Murder of the King.] In *January*, *Whitebread* ſent

over

over two Jesuits to *Ireland*, to enquire into the State of Affairs there; and in the Beginning of *April* they return'd, as he acquainted us by his Letters; and he also mention'd a Consult to be held in the Month of *April*, O.S. and accordingly a Consult was held, where the Prisoners, *Whitebread*, *Fenwick*, *Harcourt*, and *Turner* were present, and there they did sign a Resolve, *That* Pickering *and* Grove *should go on in their Attempt to dispatch the King*; *Whitebread* sign'd this Resolution at *Wildhouse*, *Fenwick* at his Lodgings in *Drury-Lane*, and Mr. *Harcourt* at his Chamber in *Duke-Street*: But I should have premis'd, that this Consult was begun at the *White-Horse* Tavern in the *Strand*, where it was agreed to send Father *Cary* to be their Procurator at *Rome*; and then they adjourn'd, and distributed themselves into several lesser Clubs, in which they severally sign'd the said *Resolve*. —— We were eight or ten that came over from St. *Omers* to *England* to this Consult, and when it was over we return'd. In the Beginning of *June*, I think, the Provincial himself came over to St. *Omers*, in order to visit the *English* Colleges in *Flanders*, and staid till about the 10th of *June*; and in some of his Discourses with the Fathers he said, *He hop'd to see the black Fool's Head at* Whitehall *laid fast enough*; *and that if his Brother should appear to follow his Footsteps, his Passport should be made too, and he also should be dispatch'd.* —— On the 13th of *June*, O.S. I had Orders to come for *England* again. On the 14th I took Passage in the Packet-Boat, and landed at *Dover* the 15th, and there I met the Prisoner, Mr. *Fenwick*, he having brought some Students thither to send over to St. *Omers*: Mr. *Fenwick*, and my self, and some others, took Coach for *London*; and when we came six Miles beyond *Canterbury*, the Searchers seiz'd a Box of his full of Beads, Crucifixes, and such Things; and he said, If they had search'd his Pockets as they did his Box, they might have found Letters that would have cost him his Life, for they were about our Concern in Hand. —— On the 17th of *June*, O.S. we came to *London*; and in *July* came over *Richard*

Page 281.

Ashby

And of *Whitebread*'s offering Sir *Geo Wakeman* 10000 *l.* to poyson the King.

Ashby, (whose right Name is *Thimbleby*) with Instructions from the Prisoner Mr. *Whitebread*, who was then in *Flanders*, to offer Sir *George Wakeman* 10000 *l.* to poyson the King; and also a blank Commission for Sir *John Gage* to be an Officer in the intended Army; which Commission, by that Gentleman's Order, I deliver'd to Sir *John Gage* upon a *Sunday*.

Whitebread. Did I order you?

Otes. He order'd *Ashby*. I saw the Letter, and knew it to be *Whitebread*'s Hand, and, I think, I fill'd up the Blanks, and there were Mr. *Harcourt*, *Ashby*, and *Ireland*, present at the same Time. Two or three Days after, Mr. *Ashby* went to the *Bath*, and Mr. *Fenwick* and Mr. *Harcourt* advis'd him to give an Account of Matters to the People in *Somersetshire*; and Mr. *Fenwick* said, He did not question, before he came to Town again, to have the Gentleman at *Whitehall* (whom they call'd the *Black Bastard*) dispatch'd.

Fenwick. What Time was this?

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His Evidence against *Gavan*.

Otes. The latter End of *July*, or the Beginning of *August*. ——— As to Mr. *Gavan*, in the Month of *June* 1678, he wrote Letters to the Fathers at *London*, giving an Account of their Affairs in *Staffordshire* and *Shropshire*, and of the Diligence of one Father *Ewers* in those Parts. And in *July* or *August Gavan* came to Town, and I met him at *Ireland*'s Chamber, where I heard him give the same Account of the Affairs of *Staffordshire* and *Shropshire* as he had done in his Letters before: And I saw him draw a Bill on one Sir *William Andrews* in *Essex*, for the Payment of Money to some Priests who were strolling there, and found it to be the same Hand with the Letter I mention'd.

Gavan. What did I write about in the Letters you speak of?

Otes. Why, how diligent my Lord *Stafford* was, *&c.* but I desire to be excus'd as to that, because it will diminish my Evidence in another Part of it.

Gavan. You are sworn to speak all the Truth.

L. C. J. You muſt ſpeak the whole Truth as far as it concerns any of the Priſoners.

Otes. He related, how ſucceſsful they were in thoſe Countries, and that there would be two or three thouſand Pounds raiſed there towards carrying on the Deſign. —— About the 12th of *Auguſt*, I am poſitive it was between the 8th and 12th, Mr. *Ireland* took his Leave of us, as tho' he were going to St. *Omers*; and Mr. *Fenwick* was to be Treaſurer and Procurator in his Abſence. And about the 21ſt of *Auguſt*, *Fenwick*, and *Harcourt*, and ſome other Fathers, met together at *Wildhouſe*, and there lay before them fourſcore Pounds, moſt of it in Guineas, which was to be paid to the four *Iriſh* Ruffians who were to murder the King at *Windſor*; and *Coleman*, who was executed, came in, and gave the Meſſenger a Guinea to haſten his Journey; but we adjourn'd from this Place to Mr. *Harcourt*'s Chamber, where the Money was paid to the Meſſenger, becauſe *Harcourt* had left ſome Papers there that were to be ſent to *Windſor*. —— The Day before, or the Day after this, there was a Conſult at the *Benedictine* Monks, where *Fenwick* and *Harcourt* were preſent, who had receiv'd an Account from Archbiſhop *Talbot* in *Ireland*, of their conſpiring the Death of the Duke of *Ormond*, and deſiring that Commiſſions and Money might be ſent over thither for carrying on the Deſign; and Mr. *Fenwick* ſent Commiſſions to *Cheſter* by a ſpecial Meſſenger, and ſome Letters by the Poſt: And Mr. *Fenwick* gave me ſome Money for my neceſſary Expences, and admoniſh'd me to procure Maſſes to be ſaid for the Succeſs of the Deſign. On the 25th I ſaw Mr. *Fenwick* at his Chamber again, and on the 26th he was to go to St. *Omers* with eight or ten Students, and I ſaw him no more till he was taken.

Otes's Evidence againſt *Fenwick* and *Harcourt*, of their paying 80 *l.* to four Ruffians, who were to murder the King at *Windſor*.

Depoſes, That the D. of *Ormond* was to have been kill'd in *Ireland*, &c.

On the 3d of *September*, underſtanding Mr. *Whitebread* was come to Town, I went to his Chamber, but being at Supper, I could not ſee him; and when I came to him next Morning, he revil'd me, and ſtruck me, imagining I had made a Diſcovery; for the Gentleman whom I had communicated

Page 283.

That *Whitebread* beat him for discovering the Plot.

municated the Thing to, and went to the King about it, having much the same Cloaths I had, they had been inform'd it was me; but having justify'd my self, he said, He would be Friends with me if I could learn who it was had done it. I have nothing else to depose concerning Mr. *Whitebread*, but that Sir *Geo. Wakeman* not accepting the 10000 *l.* that was offer'd for poysoning the King, *Whitebread* order'd 5000 *l.* more to be offer'd him, and he accepted it, and by a Letter from *Whitebread* from *Flanders*, he appear'd mightily rejoyc'd at it.

Deposes, *Turner* was at the Consult.

Sir *Cr. Levins.* What do you say to Mr. *Turner*?

Otes. He was at the Consult, and sign'd the Resolution for killing the King; as did *Whitebread*, *Fenwick*, and *Harcourt*: But I can't say positively that *Gavan* was there.

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Whitebread. He says he was at the Consult in *April*; I would know how long before that Time he and I were acquainted?

Otes. I never saw Mr. *Whitebread*'s Face till then.

Whitebread. What Employment were you to have?

Otes. When I came over from St. *Omers*, I was to attend the Motions of the Fathers at your Chamber, and carry the Resolve from Chamber to Chamber, where the Fathers respectively met.

Fenwick. How long did you stay in Town?

Otes. From the Time I came to *England* to the Time I went over again, was under twenty Days.

Fenwick. Who came over with you from St. *Omers*?

Otes. Father *Williams* Rector of *Wotton*, the Rector of *Liege*, Sir *John Warner*, Sir *Thomas Preston*, and others.

Whitebread. Were not Mr. *Nevil* and Sir *Robert Brett* there?

Otes. I believe they might.

Whitebread. You have said so in your Narrative.

L. C. J. A Man may venture to write more than he will swear.

Fenwick. His Narrative is upon Oath.

L. C. J.

L. C. J. *North.* You must bring the Person here that saw him take the Oath: You must not think to make a Pamphlet Evidence.

Gavan. What is brought against me is this, He says, *Ashby* came to Town the middle of *July*, and staid in Town a Fortnight, and charges me, that during that Time I came to Town and had such Discourse: Now I would have it ascertain'd whether it were the first or last Week that *Ashby* was in Town, because I may disprove him in one Week or t'other.

L. C. J. If it be either, it is enough to prove you Guilty.

Gavan. Was it only one Time or more you saw me in *London*? Page 285.

Otes. I saw you twice one Day, and in the Afternoon you were ill, I remember, and had a Cordial brought you by one *Walpole*, an Apothecary, or his Man, to Mr. *Ireland*'s Chamber.

Gavan. As I hope for Salvation, I never saw him till *January* when I was in Custody; nor was I in *London* in *July*.

Turner. Did you ever see me in your Life till you saw me at *Whitehall*?

Otes. I saw you at the Consult.

Turner. How many were there.

Otes. Forty or fifty: I won't say I saw you at the *White-Horse*, but at Mr. *Fenwick*'s Chamber I saw you, when they were divided into lesser Clubs.

Turner. At *Whitehall*: You said it was at *Wildhouse*.

Otes The greatest Part sitting at *Wildhouse*, we call'd it all *The Consult at* Wildhouse.

L. C. J. Your Defence, I perceive, will be little else but Captiousness, to disprove him in Circumstances of Time, Place, Persons, and Numbers, which are but little Matters to the Substance.

Mr. *Dugdale* was sworn.

Sir *Cr. Levins.* Pray acquaint the Court what you know of *Whitebread* and *Harcourt*.

Dugdale's Evidence against *Whitebread*.

Dugdale. Whitebread wrote a Letter to Mr. *Ewers* (enclos'd in one from Mr. *Groves*) advising him to choose them that were trusty and stout Fellows,

lows, and ſuch as were deſperate and hardy, or to that Purpoſe: This Letter I ſaw at *Tixhall*; for all the Letters that came to Mr. *Ewers* were directed to me, and enclos'd in Mr. *Groves*'s Letters, and this Letter I broke open and read.

L. C. J. What was Mr. *Ewers*?

Dugdale. He was a Jeſuit, and my Confeſſor; and I was entertain'd by Mr. *Gavan* in the Conſpiracy againſt the King's Life, as I was by ſeveral others.

And *Gavan.*

L. C. J. Were you acquainted with Mr. *Whitebread*'s Hand?

Dugdale. I ſaw him write a Letter at *Tixhall* before, which he deliver'd me to ſend; and I can almoſt poſitively ſwear it is his Hand.

L. C. J. What ſay you to *Gavan* and *Ewers*?

Dugdale. There were ſeveral Conſultations for taking away the King's Life and introducing Popery, at Mr. *Ewers*'s Chamber, and *Gavan*'s, and at my own; and one particularly in *September* laſt at *Tixhall*, where were Mr. *Gavan*, my Lord *Stafford*, and ſeveral others. And I being pitch'd upon for one, who was to make an Attempt upon the King, was to be ſent to *London* by Mr. *Harcourt*, to be under the Tuition of Mr. *Parſons*.

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L. C. J. Who broke it firſt to you?

Dugdale. Mr. *Ewers* and *Gavan*; and I appeal to Mr. *Gavan* for the Truth of this.

Gavan. Look on me with Confidence if you can?

Mr. J. *Pemberton.* You muſt not threaten the King's Witneſſes.

Dugdale. Was I never under your Tuition?

Gavan. He was not under my Tuition: I never was in his Chamber in my Life. Pray, in what Room of my Lord *Aſton*'s Houſe was this Diſcourſe, and who were preſent?

Dugdale. It was in the little Parlour, and in Mr. *Ewers*'s Chamber; and there were Mr. *Ewers*, Mr. *Lewſon*, Mr. *Peters*, and ſome others; and Mr. *Gavan* knows my Zeal, for I gave them 400 *l.* to pray for my Soul, and carrying on this Deſign; and afterwards, when they ſaid they were afraid they ſhould want Money for carrying it on, I promis'd

promis'd them 100 *l.* more, and Mr. *Gavan* assur'd me, I should be canoniz'd for a Saint.

Sir *Cr. Levins.* Did you hear any Thing of an Army, or about making a Massacre?

Dugdale. Mr. *Gavan* said, Tho' beyond Sea they had Troubles enough themselves, yet if we could effect it, Men and Money would not be wanting; and there was a Letter came from *Paris* into the Country thro' Mr. *Harcourt*'s Hands, That it was their Opinion at *Paris* and St. *Omers*, that they should fling the King's Death upon the Presbyterians, and then they might bring the Episcopal Men into their Party, to revenge themselves upon them. And there was to have been a Massacre; and if any escap'd that, who were not Papists, there was to be an Army to cut them off. And Mr. *Gavan* has endeavour'd to prove by Scripture, That it was lawful and good to destroy the King, or any one, for the sake of Religion, and observ'd what great Miracles the Reliques of Father *Garnet* had wrought beyond the Seas. Page 287.

Sir *Cr. Levins.* How many Letters have you intercepted of Mr. *Harcourt*'s?

His Evidence against Mr. *Harcourt*, and concerning Sir *E. Godfrey*'s Murder.

Dugdale. I believe a hundred; and particularly one, which gave an Account of the Death of Sir *E. Godfrey*, the *Monday* before he was found, and must be written on the *Saturday* he was kill'd, for the Words were, *This very Night Sir* E. Godfrey *is dispatch'd.*

Mr. *Belwood.* Did you acquaint any Body with this?

Dugdale. The next Day, being *Tuesday*, I went to the Alehouse near my Lords, and ask'd, If they did not hear of a Knight that was kill'd at *London?* And have one here to testify it.

Harcourt. When was the last Time you receiv'd any Letters from me?

Dugdale. The last was that about Sir *E. Godfrey* in *October.*

Harcourt. I have not writ to that Person this Year and half.

Dugdale. You know when Mr. *Ireland* was in the Country last Year, you were to send him the Answers that came from St. *Omers* to my Lord *Aston*'s,

eight

eight of which I ſaw, at leaſt, and yet you ſay you have not written to me in a Year and half.

Harcourt. I did formerly write to Mr. *Ewers*, and directed the Letters to him, but have left off writing for ſeveral Years; neither did I write the Letter he ſpeaks of, or ever approve the Murder of any Man; and as for his knowing my Hand, when the Committee came to the Gate-Houſe, and three of them writ down their Names, and he was call'd in, and aſk'd which was mine, he could not ſay which was mine.

L. C. J. You write more Hands, and have more Names than one.

Mr. *Chetwind* was call'd.

Page 288. L. C. J. Do you remember any Diſcourſe you had with Mr. *Dugdale* laſt Summer?

Chetwind. I was in *Staffordſhire* laſt *October*; and on a *Tueſday* that Month, one Mr. *Sanbridge*, a Kinſman of my Lord *Aſton*'s, came to me and ſaid, He had been at *Elds*, and a Girl of the Houſe told him, Mr. *Dugdale* had been there and reported, there was a Juſtice of Peace of *Weſtminſter* kill'd, and on *Saturday* following my Letters brought down the News of it; and I remember alſo, that being at *Litchfield* that *Saturday*, News came thither, that Sir *E. Godfrey* was found murder'd.

Mr. *Dugdale* was ſet up again.

Mr. *Recorder.* What were thoſe hardy, deſperate Fellows to do, that Mr. *Whitebread*, in his Letter, adviſes them to make Choice off.

Dugdale. They were to kill the King.

Whitebread. Were thoſe very Words, *killing the King*, in the Letter I wrote?

Dugdale. To the beſt of my Remembrance thoſe were the very Words, and I was one that was made Choice of about it.

Page 289. L. C. J. Were theſe Letters ſent by the ordinary Poſt?

Dugdale. Yes, and they were directed to me; ſo that if they had been intercepted, I ſhould have been hang'd, and they ſav'd.

Whitebread. How came you to ſee theſe Letters?

Dugdale. I open'd them my ſelf.

L. C. Bar.

L. C. Bar. Do you know any Thing of Mr. *Turner*?

His Evidence against *Turner*.

Dugdale. He agreed, in my Hearing, to all I have ſaid before.

Turner. Where was this?

Dugdale. At *Tixhall*, at Mr. *Ewers*'s Chamber, and other Places, about two Years ago, at the Beginning of this Buſineſs.

Turner. I have not been in *Staffordſhire* theſe four Years.

Mr. *Prance* was ſworn.

Sir *G. Levins.* What can you ſay to any of the Priſoners?

Prance's Evidence againſt *Harcourt*.

Prance. About a Year ago I made Mr. *Harcourt* an Image of our Lady to be ſent to *Maryland*, and when he paid me the Money for it, he told me, There was a Deſign of killing the King.

Sir *G. Levins.* What ſay you to Mr. *Fenwick*?

Againſt *Fenwick*.

Prance. I was with Mr. *Fenwick*, *Ireland*, and *Grove*, at Mr. *Ireland*'s Lodgings in *Ruſſel-Street*, about a Fortnight before *Michaelmas* laſt, and they were talking of 50000 Men to be rais'd, to carry on the Catholick Cauſe, and ſettle the Catholick Religion; and Mr. *Fenwick* told me, they were to be commanded by the Lords *Arundel*, *Bellaſis*, *Petre*, and *Powis*. And two or three Days after, *Grove* came to buy ſome Silver Spoons of me, and he told me the ſame Thing.

Sir *G. Levins.* Had *Fenwick* any Diſcourſe with you about Trade.

Prance. I aſk'd him, What we poor Tradeſmen muſt do if there were Civil Wars? And he ſaid, I need not fear, I ſhould have Church-Work enough, in making Images, Chalices, Crucifixes, Vaſes, and ſuch Things: And about a Week or eight Days before *Michaelmas*, being at Mr. *Fenwick*'s Chamber, he importun'd me that he might be my Confeſſor, for Father *James*, my Ghoſtly Father, was dead; and I told him, When I came to Confeſſion I would come to him; and he enjoyn'd me once or twice to ſay nothing of what I heard ſaid.

Harcourt. Can you ſay that ever I ſpoke to you about any ſuch Buſineſs?

Page 290.

Prance. Yes, when one *Thomſon* came with you, and you paid me 44 *l.* for four Candleſticks.

Mr. *Bedloe* was ſworn.

L. C. J. What do you know of Mr. *Whitebread* and Mr. *Fenwick* ?

Bedloe's Evidence againſt *Whitebread, Fenwick,* and *Harcourt,* with an Account why he ſmother'd his Evidence at a former Tryal.

Bedloe. I did not ſay half I would at the laſt Tryal, becauſe I had engag'd to Mr. *Reading* to bring them off, that he might put a Confidence in me concerning my Evidence againſt the Lords in the *Tower.*

L. C. J. But what ſay you now to them?

Bedloe. I ſaw Mr. *Fenwick* at the Conſult. And I heard *Whitebread* tell *Coleman,* at Mr. *Harcourt's* Chamber, the Manner of ſending the four Ruffians to *Windſor* about *September* —— And I ſaw *Harcourt* take eighty or a hundred Pounds out of his Cabinet for them, and pay the Meſſenger, and he gave the Meſſenger a Guinea, which Mr. *Coleman* left, to drink his Health.

Sir *Cr. Levins.* What was *Pickering* and *Grove* to have?

Pickering and *Grove* employ'd to kill the King, and their Reward

Bedloe. The Sum appointed for *Grove* at Mr. *Harcourt's* Chamber was 1500 *l.* and *Pickering* was to have as many Maſſes ſaid, as, at 12 *d.* a Maſs, amounted to that Sum; and *Pickering* had been diſciplin'd and check'd by his Superiors, for having miſs'd ſo many Opportunities of killing the King: Once the Flint of his Piſtol was looſe, at other Times there was no Powder in the Pan, or he had loaded only with Bullets. —— I never ſaw *Whitebread* but twice at *Harcourt's* Lodgings; and one of the Times, when *Harcourt* himſelf was there, Sir *George Wakeman's* Buſineſs was menti-on'd, and it was agreed, That ſince Sir *George* would not accept 10000 *l.* they would give him 15000 *l.* But *Ireland* ſaid, The moſt certain Way of diſpatching the King, was at his Morning-Walks at *Newmarket*; and *Fenwick* and *Conyers* went thither, and I heard there were to be ſeven or eight of them. —— And Mr. *Harcourt* is no Stranger to my bringing over Packets and Portmantles from beyond Sea.

A Deſign to kill the King at *Newmarket.*

Harcourt. He never brought me but one Packet, and never brought me any Portmantle; nor did I

ever

ever see him but twice before I met him at the Privy-Council.

Bedloe. It must be more than two Packets I have brought over; for I have brought Letters from *Watton*, St. *Omers*, *Bruges*, *Paris*, *Valledolid*, and *Salamanca*, and carry'd Answers, containing an Account of the Plot, and the Design of subverting the Government and altering Religion, what Forces might be rais'd here and Abroad, and what Contributions were made or expected; and all or most of these were lodg'd in Mr. *Harcourt*'s Hands: And I have been sent from Mr. *Harcourt* to *Langhorne*, with Papers relating to this Affair, to register them. Page 291.

Whitebread. Was *Bedloe* a Lieutenant of Horse or Foot in *Flanders*?

Bedloe. I was a Lieutenant of Foot in the Prince of *Friezland*'s Regiment.

Whitebread. Take Notice, there is no such Officer of Foot in *Flanders*; there are only Captains and Alfara's. (Ensigns.)

Then *Bedloe* sent for his Commission to shew.

Harcourt. You say, you have had Papers from me, and been very familiar with me, when I never saw you but twice before I met you at the Council; the first Time was five Years ago, when you brought Letters from *Dunkirk*: And in Confidence of that Service, he came to me a little after, and said, He was become a Roman Catholick, and had lost his Friends by it; and desir'd I would assist him, and let him have a little Money, and he would repay me; for he had some Friends he hoped would do something for him, tho' his Father had deserted him; and I lent him Twenty Shillings, but never saw his Face afterwards.

Bedloe. Pray, Mr. *Harcourt*, was not you in Company with me and *La Fevre* in *August* or *September* last?

Harcourt. I believe I did see him at that Time, but not since.

Bedloe. And farther, I saw Mr. *Harcourt* give Sir *George Wakeman* a Bill of Exchange for 2000 *l.* and tell him, that was in Part of a greater Sum.

Page 292. *Bedloe's* Evidence of Sir *G. Wakeman's* receiving 2000 *l.* in Part of 15000 *l.* for poysoning the King.

And Sir *George* said, That 15000 *l.* was but a small Reward for settling Religion, and preserving three Kingdoms from Ruin; and if it were not for such a Woman, he would not undertake it, but for her he would do any Thing. And Sir *Geo. Wakeman* read the Bill, put it up, and went and receiv'd the Money.

Then Mr. *Bedloe* produc'd his Commission, and some of the Judges look'd upon it.

After which, the King's Council produc'd a Letter that was found among Mr. *Harcourt's* Papers, from one *Petre*, a St. *Omers* Jesuit, giving an Account, that *Whitebread* had appointed a Consult in *April*, concerning some considerable Matters that requir'd Secrecy.

The Letter was to this Effect:

That the Provincial had appointed all those who had Suffrages at the intended Congregation to be in *London* the 21st of *April*, O.S. in order to its beginning the 24th; and if his Occasions would not permit him to be present, he should signify so much, that his Absence might be supply'd: And it was order'd, That none should go to *London* much before the Time, or appear in Town till the Consult was over, *lest Occasion should be given to suspect the Design. Finally*, says he, *Secrecy, as to the Time and Place, is much recommended to all those that receive Summons, was it ill appear of its own Nature necessary.*

L. C. J. Come, Mr. *Harcourt*, will you expound this Letter to me concerning this Meeting and Privacy?

Harcourt. It was not writ to me, but to one who had a Right to vote in our Congregation, which is held once in three Years; the chief Business whereof is the sending a Procurator to *Rome*; and Secrecy was very fit to be recommended, we living in a Country where we are an Eyesore, and might give Offence by our meeting in such Numbers.

Page 293. L. C. J. This is but a forc'd Construction of the Letter. When I call a Thing by the Name of a Design, and tell you, that in its own Nature it requires Secrecy, shall this amount to no more than the chusing of an Officer? *White-*

Whitebread. It is hard to bring so many Men's Lives in Danger upon the Interpretation of a Word, which may as properly signify the one as the other; and 'tis evident, there was a just Cause for Secrecy, because of our Profession.

L.C.J. Must all these Cautions be used merely for chusing an Officer. Page 294

Gavan. My Lord, our Lives depended upon it, if we were taken.

L.C.J. I would appeal to your selves, If the natural Import of this Letter does not carry something more than ordinary in it; and unless you can give a better Answer to it, the Letter will hang about your Necks.

Otes. Mr. *Gavan* can tell now what this Consult was for, but he deny'd there was a Consult at the Council Board.

Fenwick. I did not deny it there.

Bedloe. Tho' Mr. *Gavan* says, It was in respect to the King and Parliament they would have their Consultations kept private, the Sessions of Parliament were the only Time we were employ'd to fetch them over.

Otes. More of them appear bare-fac'd in the Court of Request, and the Lobbies then, threatning the Protestants, than at any other Time.

Another Letter was produc'd by the King's Council, which was found amongst Mr. *Harcourt's* Papers, which had not any Thing material in it, unless it were the Word *Patents*, by which, the King's Council and *Otes* said, was meant Military Commissions which were to be sent over hither.

L.C.J. What is the Meaning of this Word *Patents?* Page 295.

Whitebread. They were the Patent for my being Provincial.

L.C.J. Is that Patents?

Whitebread. Every Patent is call'd *Literæ Patentes*, tho' it be but for one Person.

Otes. My Lord, there were a great many of these Patents came down in *April* and *May*.

L.C.J. Methinks, he interprets them better than you do; but if you have any Thing farther to say in your Defence, begin, Mr. *Whitebread.*

Whitebread's Defence.

Whitebread. I thank God, I am not afraid of Death, but would not die unjuſtly; a Man's Blood is dear to him, and Life is a Thing that ought not to be thrown away, but charily to be look'd after: And, without Contradiction, Mens Lives may be taken away by Perjury, as well as by a Knife or Piſtol. No Man's Evidence ought to be admitted who is not *probus teſtis*, which Mr. *Otes*, who is brought to prove the Deſign mention'd in the Letter, is not; for I hope I may, without giving Offence to the Court, ſay, That he is perjur'd.

L. C. J. You mean, that his Evidence is falſe; you may prove it if you can.

Whitebread. He tells you, He came over and was preſent with me here the 24th of *April*, and I order'd him to do ſuch and ſuch Things, and diſcover'd the whole Plot to him: Is it probable, I ſhould be ſo very eaſy, to truſt a Man in ſuch a Buſineſs, whom, by his own Confeſſion, I never ſaw till that Time; ſurely, I ought rather to have been ſent to *Bedlam* than *Newgate*: Beſides, he was a Man that had no Livelyhood or Subſiſtance, but what he had from us at St. *Omers*.

L. C. J. Is it a Wonder you ſhould take into your Confidence a Man, whom, for a conſiderable Time, you had maintain'd Abroad.

Whitebread. My Predeceſſors had maintain'd him, but when I came to be Superior, I found him not fit for the Purpoſes he pretended to; for, firſt, it was doubtful if he were a good Catholick; and ſecondly, he led a very idle Life; and being very zealous to be entertain'd amongſt us, I therefore deſir'd him to abſent himſelf and retire; and to that Purpoſe we gave him a good Suit of Cloaths, a Peruke, and four Pounds in his Pocket, which he promis'd to repay us again when he had ſold his Library, which he boaſted he had in *London*, but he never did. —— And ſurely, my Lord, there is ſome Difference between doing a charitable Act to a Man in Want, and a Scholar, and truſting him in ſuch an Intrigue as this: But, my Lord, to ſhew that he could not be at this Conſult the 24th of *April*, I ſhall prove, that he

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he was not out of St. *Omers* from the 10th of *December* to the 23d of *June*, above one Night. Then, my Lord, that I ſhould write ſo plainly of a Deſign *to kill the King*, and ſend the Letter by the common Poſt directed to Mr. *Dugdale*, whom I never ſaw but once, is what your Lordſhip may juſtly wonder at.

Mr. *Fenwick's* Defence.

Fenwick. If your Lordſhip pleaſes to obſerve, the Tenor of this Man's Evidence, it is, That he ſaw ſuch and ſuch Letters. Now, is it poſſible I ſhould ſhow ſuch Letters to a Man that had been turn'd away from St. *Omers* for his Miſbehaviour? Beſides, I had a thouſand Letters taken upon me, in which, if produc'd, your Lordſhip will not find any Thing tending to a treaſonable Deſign, nor had I convey'd any Thing away, not dreaming of being apprehended; they took upon me five or ſix thouſand Pounds in Bonds and Bills, as well as Letters; and it is ſtrange this Deſign ſhould not appear in any of them.

L. C. J. It is much more ſtrange, that one ſuch Letter ſhould be taken, than that the reſt ſhould be undiſcover'd. I believe Mr. *Harcourt* would not have permitted that Letter that has been read to have been ſurpriz'd, if he had thought it would have been of ſuch Conſequence, and the Senſe have appear'd ſo criminal.

The Evidence againſt the King not to be ſworn in capital Caſes.

Then Mr. *Hilſley* was call'd, and the Priſoners deſired he might be ſworn, and quoted my Lord *Coke*, who ſays, There is not ſo much as *ſcintilla Juris* againſt it: But the Court inform'd them, the conſtant Practice was otherwiſe, and that my Lord *Coke* ſaid, The Evidence ought to be ſo plain, that nothing could be anſwer'd to it, and therefore no Evidence ought to be ſworn againſt the King.

Whitebread. In Mr. *Ireland's* Tryal, *p.* 35, *Otes* ſays, He came over with Sir *John Warner*, Father *Williams*, and Mr. *Hilſley*.

Printed Tryals no Evidence.

Mr. J. *Pemberton.* You can't reſort to printed Tryals for Evidence.

Fenwick. Did not you own, Mr. *Otes*, that you came over with Mr. *Hilſley*?

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L. C. J. He is not convicted of Perjury, and therefore that must not be urg'd.

Otes. One Mr. *Hilsley* did come over with us.

Mr. *Hilsley* appear'd.

Hilsley. My Lord, that is false.

The Court upbraid the Prisoners Witnesses for their Religion and Principles.

L. C. J. What Religion are you of? Are you a Roman Catholick?

Mr. J. *Pemberton.* Your Provincial can give you a Dispensation for what you say.

Hilsley. I hope a Roman Catholick may be a good Witness?

Otes. 'Tis true, Mr. *Hilsley* did leave me at St. *Omers*, he came away on the *Sunday* Morning, and I came away on the *Monday*, but I overtook him at *Calais*, and he lost his Money at *Calais*, and Father *Williams* did relieve him by my Means; and I remember, when we came over, he left us on the Road, and did not come up to *London* with us.

Hilsley. It is true, I did lose my Money, and that I staid by the Way, and I suppose he learn'd it from a Gentleman he was very familiar with the 2d of *May* after.

L. C. J. I speak seriously, I don't understand how he could come by these Things?

Otes. I desire he may answer if he be not a Priest?

L. C. J. That would be to make him accuse himself, and bring him within the Danger of Treason.

Mr. J. *Pemberton.* He is a Boy very fit to make a Jesuit of.

William Parry appear'd.

Parry. My Lord, I can make Oath, if I may be admitted, that *Otes* was at St. *Omers* that Day he says he came over; for I din'd with him that Day, and that Day he went into the Infirmary, being the 25th of *April*, O. S. and he fell out with a Gentleman in the Infirmary.

Fenwick. How long did Mr. *Otes* stay at St. *Omers*.

Parry. He staid till after the 20th of *June*, for then he was present at a *Latin* Play.

Otes. My Lord, he is not only a Votary of the Jesuits, but has been of the Sodality several Years; and they are bound to say what their Superiors bid them. Besides, if it was the 25th of *April*, O.S. how could Mr. *Williams* let Mr. *Hilsley* have Money that Day at *Calais*, when Mr. *Williams* was, the 24th, O.S. at the Consult at *London*: And if he mean N.S. all that he hath said is false, unless it be that I was there the 20th of *June*. Page 298.

Mr. *Recorder*. He does not know New Stile from Old Stile.

Whitebread. I desire he may answer, If *Otes* was ever out of the House from the Time he came, in *December*, until *June*, but one Night.

Parry. No, never but one Night he was at *Watton*. The Prisoners Witnesses aver, that *Otes* was at St. *Omers* at the Time he swore he was at the Consult.

L. C. J. Might not he go, and you not know of it.

Parry. Not a Scholar goes to *England* but the whole College rings of it.

Gavan. And when they go out, they put on Secular Cloaths, that every one must take Notice of it.

Otes. My Lord, that is generally true; but I put on the Habit of the House as soon as ever I return'd from *London*, and did not appear as if I had gone out of the House; nor can I say, that any one knew I had been out.

Whitebread. Whatever his Cloaths were, that did not alter the Place he sate in: And he being older than the Boys, had the Privilege of sitting in a particular Place, which must be observ'd by all the House at Dinner and Supper; he was visible every Day there.

Mr. *Doddington* appear'd.

Doddington. Mr. *Otes* came to the College a Fortnight before *Christmas*, and never went out of the College but one Night till the next *June*, except one Night at *Watton*.

L. C. J. Did you see him every Day, except that Day?

Doddington. I can't say every Day, because he was in the Infirmary once; and particularly that Day Mr. *Hilsley* went away.

L. C. J.

L. C. J. When did Mr. *Hilsley* go away?

Doddington. It was upon a *Sunday* the 24th of *April*, N. S. and I discours'd with him two or three Days in the Infirmary after Mr. *Hilsley* was gone; and I saw him walking the 2d of *May* with Mr. *Burnaby* in the Garden.

The Court ask'd this Witness, What Name he went by at St. *Omers?* How old he was? When he came from St. *Omers*, and why? To which he answer'd, That he went by the Name of *Hollis* there; that he was eighteen Years old and an half; and that he came to *England* about two Months before, partly upon the King's Proclamation, requiring those who were in the Seminaries to return, and partly for his Health.

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Mr. *Gifford* appear'd.

L. C. J. When came you from St. *Omers?* and upon what Occasion.

Gifford. I came from St. *Omers* a Month ago, to prove that Mr. *Otes* was there all that Time he says he was here.

L. C. J. When did you see Mr. *Otes* there?

Gifford. The 1st of *May*, when one Mr. *Burnaby* came to the College; and he was with us every Day after for a whole Week: And I remember, when Mr. *Hilsley* went away, he was in the Infirmary, and staid there for three Days.

L. C. J. And how long did you see him after Mr. *Hilsley*'s Departure.

Gifford. I can swear I saw him, at least, till *June*, if I may believe my own Eyes.

L. C. J. Your Religion does not allow you to believe your own Eyes; do you know he went out of the College at any Time?

Gifford. Yes, he went to *Watton* for one Night.

L. C. J. How came you to take such particular Notice he was there?

Gifford. We could not but take Notice of him; for we dine all in one Room, and he had a distinct Table by himself, between the Boys and the Religious.

Mr. *Palmer* appear'd.

L. C. J. When did you come from St. *Omers?* and why?

Palmer. I came from thence about two Months ago, becauſe I had no Mind to ſtay longer.

L. C. J. When did you ſee Mr. *Otes* there?

Palmer. I ſaw him the 1ſt of *May*, N. S. by a particular Token. We had Strangers din'd at the College that Day, and I ſaw Mr. *Otes* and ſeveral other Boys playing at Nine-Pins that Afternoon.

L. C. J. Why do you call them all Boys? Do you count Mr. *Otes* a Boy?

Palmer. We call all Boys but the Religious, and he was none of them, tho' he ſate at a Table by himſelf, he went to School with the Boys.——— The 2d of *May* I ſaw him with Mr. *Burnaby*, and wonder'd at his Impudence for intruding into his Company, being a Gentleman he had never ſeen before; I ſaw him there the 6th of *May* when Mr. *Killingbeck* went away, and when Mr. *Poole* went away, who being a weak Man, Mr. *Otes* ſaid, He did not go alone, for *there went Eſquire* Poole *and Eſquire* Fool *together*. The 11th of *May* I ſaw him at an Action or Play, and he would ſit among the Muſick, where no Body ever ſate; and thereupon Mr. *Watſon* quarrel'd with him, and they had like to have fought, and he did not ſtir away till *June*.

Sir *Cr. Levins.* Did not you go by the Name of *Sanders* or *Hill*, and were maintain'd at St. *Omers* by one *Caryll*?

Palmer. No, I went by the Name of *Palmer*; and my Father, Sir *Philip Palmer* of *Buckinghamſhire*, maintain'd me there. Page 300.

Mr. J. *Pemberton.* He is Cup-Bearer to the King.

Mr. *Cox* was ſworn.

He depos'd, That he ſaw Mr. *Otes* at St. *Omers* in *April* and *May*, when he ſaid he was in *England*.

L. C. J. When did he go away?

Cox. In the Month of *July* I am ſure.

L. C. J. Why, he differs from all the reſt.

Cox. Mr. *Otes* was not abſent from St. *Omers* till the Conſult of the Jeſuits was over.

L. C. J. When was that?

Cox. It was after *May*, it's no Matter what the Month was, whether *June* or *July*; [Here the People

People laugh'd.] my Lord, If I prove he was not in *England* in *May*, it is ſufficient.

L. C. J. Upon my Word you deſerve a ſharp Penance; you have done your Friends great Pejudice.

Gavan. Your Lordſhip will not take Advantage of every particular Circumſtance; young Men may not remember the particular Day of his going away.

L. C. J. But he delivers his Evidence as if he was inſtructed; and ſays, This is ſufficient; but we muſt have Proof to ſatisfy us. I aſk you, Sir, to name the Month when Mr. *Otes* left St. *Omers*?

Gavan. If you don't remember the Time, ſay ſo.

Cox. My Lord, I cannot remember it.

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Thomas Billing appear'd.

He depos'd, That *Otes* came to St. *Omers* the 10th of *December*, and ſtaid there till the latter End of *June*; that he was twice in the Infirmary, and once at *Watton* during that Time: That he remember'd he was put to read in the Sodality the 25th of *March*, and that he read every *Sunday* Morning at ſix a Clock, from that Time till he went away.

L. C. J. Did he read when he was Sick in the Infirmary in *April*?

Billing. He was only a little indiſpos'd, and frequented the Infirmary in the Day Time for three or four Days; he was not Sick on the *Sunday*, as I remember,

L. C. J. Did you ſee him once in two or three Days?

Billing. Yes, I did conſtantly: And I remember, particularly, I ſaw him the 2d of *May* walking very familiarly in the Garden with Mr. *Blunt*, and wonder'd at his Impudence; and I remember that the ſame Day there happen'd ſome Words between *Otes* and one *Howard*, and *Howard* ſtruck up his Heels, and *Otes* withdrew into the Infirmary, as we thought, to complain to the Rector; and by ſuch Circumſtances as theſe, I remember to have ſeen him every Day, or every other Day, till he went away in *June*.

Mr. *Town-*

Mr. *Townley* appear'd.

He depos'd, That he saw *Otes* at St. *Omers* in *April* and *May*, and till about the 10th of *June*, when he thought he went away. That *Otes* was the more remarkable, and the easier miss'd, because he was something between a Father and a Scholar, and sate at a Table alone between them.

Mr. *Hall* appear'd.

He depos'd, That *Otes* came to St. *Omers* about *Christmas* 1677, and went away the following *June*; and that he saw him almost every Day during that Time, but when he was at *Watton*; and that when *Otes* went into the Infirmary, he used to see him there. Page 302.

John Hall appear'd.

He depos'd, That he saw *Otes* at St. *Omers* all the Months of *April* and *May*, and till the 23d of *June*, when he went away; that the Deponent was Butler, and serv'd Mr. *Otes* with Bread and Beer during that Time, except when he was in the Infirmary, which, he thought, was four or five Days; that he had this Reason to remember him, that he laid his Table at a particular Place near the Door, where he always sate.

Juryman. What Employment have you now?

Hall. I live at Home with my Father, who is a Gentleman in *Radnorshire*; and I was summon'd to *London* for a Witness.

Cook appear'd.

He depos'd, That he came over from St. *Omers* in *January* last, to be a Witness; that he saw *Otes* all *April* and *May* at St. *Omers*; and that the Deponent being the College Taylor, and living in the College, he made Mr. *Otes*'s Cloaths before he came away the 23d of *June*.

Sir *Cr. Levins.* Why, there were 150 Scholars, can you tell every one that was absent all that Time? Page 303.

Cook. I can't tell every one that was absent, but he was particular enough.

Mr. *Belwood.* Was *Otes* absent at *Watton*?

Cook. Yes, one Night in *April*, as it was talk'd among the Scholars.

Gavan. *Otes* says in his Narrative, that he came over with Sir *John Warner* and Sir *Thomas Preston.*

L. C. J. If you could prove him forsworn at a former Tryal, you might make use of it; but then you should have indicted and try'd him for Perjury, and he could not have been heard.

Otes. My Lord, I own I did come over with the Rector of *Liege*, Sir *John Warner*, Father *Williams*, Father *Marsh*, Father *Warner*, Sir *Thomas Preston*, and others.

The Prisoners Witnesses prove, that Sir *John Warner* and Sir *Thomas Preston* were in *Flanders*, when *Otes* swore he came to *England* with them.

Bartlett, a *Dutchman*, appear'd.

He depos'd, That Sir *John Warner* did not come to *England* in *April* or *May*, for he saw him all those two Months at *Watton.*

Carlier, another Foreigner, appear'd.

He depos'd, That Sir *John Warner* had been at *Watton* for two Years last past, and, particularly, that he was there all *April* and *May* was Twelve-Month.

L. C. J. How does he know it?

Interpreter. He says, That he was Gardener in the House.

Page 304. *Charles Vernon*, another Foreigner, appear'd.

He depos'd, That Sir *John Warner* was at *Watton* all *April* and *May*, and continued there till *September*; that the Deponent used to go with a Vessel between St. *Omers* and *Watton*, and saw Sir *John* almost every Day.

One *Baillee* appear'd.

He says, He remembers Sir *John Warner* was at *Watton* all *April* and *May* was Twelve-Month; for that the Deponent being a Mason, Sir *John* gave him Orders for making a Bastiment, and daily gave him Directions about it.

John Joseph appear'd.

He depos'd, That he was Porter of the *English* House at *Liege*, and that Sir *Thomas Preston* was there all the Months of *April*, *May*, and *June*; for the Deponent saw him there almost every Day.

Peter Carpenter appear'd.

He depos'd, That he was Caterer in the *English* House at *Liege*, and that he saw Sir *Thomas Preston* there all the Months of *April* and *May.*

Gavan.

Gavan. My Lord, my Caſe is different from the reſt; Mr. *Otes* does not charge me with being preſent at the Conſult; but ſays, He ſaw my Hand to it, and, indeed, I can prove I was at *Wolverhampton* at the Time of the Conſult.

L. C. J. That will be to no Purpoſe. Might not you come to Town in *June* or *July* following, and ſet your Hand to what was agreed in *April?* He ſays, That he ſaw a Letter of yours, giving an Account of the Affairs of *Staffordſhire* and *Shropſhire*; and that in *July* afterwards, before Mr. *Aſhby* went to the *Bath*, he heard you talk of the ſame Affairs; now, if you will contradict him, you muſt prove that you were not here all *July*.

Catharine Winford was call'd. Page 305.

Winford. My Lord, he was a Sojourner in my Houſe at *Wolverhampton* moſt Part of the Summer, and particularly in *June* and *July*; but the 23d of *July* he went from my Houſe, and took a Lodging he thought more convenient for him in the ſame Town.

Gavan's Witneſſes depoſe, that he was in *Staffordſhire* when *Otes* ſwears he was in Town.

L. C. J. Was he never away from you all that Time?

Winford. No; and after he went away I ſaw him every Day, or every other Day.

L. C. J. Are you a Roman Catholick?

Winford. Yes, my Lord, I am.

Mary Poole was call'd.

L. C. J. Do you know where *Gavan* was this Time Twelve Month?

Poole. He was at Mrs. *Winford*'s, I was a Servant in the Houſe then.

L. C. J. And where was he in *April* and *May?*

Poole. He was at my Miſtreſſes then too, I believe; I do not remember his going forth till the latter End of *July*; and he was there in *June* too.

L. C. J. You anſwer readily as to *June* and *July*, why do you doubt whether he was there in *May*, any more than in *June?*

Poole. I do not doubt that he was there then.

L. C. J. But why did not you anſwer to that Time as readily as to the other?

Poole. Any

Poole. Any one may miſtake.

L. C. J. This you came prepar'd for. Are not you a *Roman* Catholick?

Poole. Yes, my Lord.— *Here the People langh'd:*

Then my Lord Chief Juſtice ſaid, He acknowledg'd Papiſts were competent Witneſſes; but fell foul upon their Principles and Practices. *At which the People ſhouted.*

The Chief Juſtice falls upon the Principles of the Papiſts, and the People ſhout.

L. C. J. You muſt pardon the Peoples Shouting, for you have ſo turn'd their Hearts, that a Papiſt will hardly be able to live in *England*, I'll maintain it. *Here the People ſhouted again.*

Gavan. If there be but a Place in Heaven for us, I am contented. Pray aſk Mrs. *Winford* if ſhe remembers I came from my Lord *Aſton*'s the *Monday* before.

Winford. I cannot recollect my ſelf.

L. C. J. Did he go to any Gentleman's Houſe ſome Time before he left yours.

Winford. He went often Abroad to my Lord *Aſton*'s.

L. C. J. Did he ever ſtay there five or ſix Days.

Winford. I cannot tell.

L. C. J. My Meaning is, if he might not make a Step to *London*, and you be never the wiſer.

Winford. I am as confident as I can be of any Thing in the World of the contrary; for I uſed to order my Maid to get his Linnen ready upon a Journey, and he had none.

Otes. My Lord, he took another Chamber to go into the Exerciſe: Now, my Lord, he might take it on that Pretence, and come to *London* in the mean Time, becauſe he was to be ſhut up, and none to come near him. Page 305.

L. C. J. Are theſe People ſhut up at a certain Time, that there is no coming near them? When went he firſt into this recluſe Way?

Winford. He went from my Houſe the 23d of *July*; but yet moſt of thoſe laſt eight Days in *July* I ſaw him. He was ſhut up indeed; but upon ſuch an Occaſion, as the carrying him Linnen, or a Pair of Gloves, or ſometimes to ſpeak with him about Buſineſs, we were admitted.

L. C. J. Can you ſay that it was not poſſible for him to ſtep to *London*, and you not know it, in thoſe Months of *June* and *July*, when you acknowledg'd you were not poſitive, but he might be abſent five or ſix Days?

Winford. He was not abſent long enough to do it; and I do not believe he did, becauſe he had no Linnen with him.

Gavan. Let me ſpeak, or an innocent Man will be loſt elſe. *Otes* ſays, expreſly, I was in Town in *July*, and gives this Reaſon for it, That Mr. *Aſhby* was in Town, and he met me with him.

L. C. J. Mr. *Otes* is not poſitive whether it was *June* or *July*.

Otes. Mr. *Aſhby* came to Town either the Beginning or Middle of *July*, and while he ſtaid in Town Mr. *Gavan* came up.

L. C. J. Call your Witneſſes then, Mr. *Gavan*, and prove expreſly where you was the Beginning of *July*.

Gavan's Defence.

Gavan. My Lord, be pleas'd to hear the Words of an ingenuous Man. As I was innocent, and did not know what I ſhould be charg'd with, I ran over in my Mind all that I had done that they could lay hold off; I ranſack'd my Memory, and ſcann'd all the Paſſages of my Life, that cou'd give them any Handle to accuſe me: And becauſe I imagin'd they might think I was here the 24th of *April* at the Conſult, I brought Witneſs to diſprove that. ———

L. C. J. But you have not one Proteſtant that teſtifies for you.

Gavan. My Lord, I humbly caſt my ſelf upon the Honour and Juſtice of this Court, I have uſed all the Remedies I can; but ſince there is only his Oath and my Denial, I ſhall make this one Demand. This learned Court knows, that in the Beginning of the Church, for the firſt thouſand Years, where there was only the Accuſer's Oath, and the Denial of the Party charg'd, the Priſoner uſed to put himſelf upon the Tryal *Ordeal*, to evidence his Innocence.

Offers to put himſelf on the Tryal *Ordeal*.

But is told we have no such Law, and that he did it to amuse the People.

L. C. J. We have no such Law now; this is only an artificial Varnish, which you think will take with the Audience, and it may indeed with the Roman Catholicks: They may believe you innocent, upon your offering to undergo this Tryal, and think it a great Hardship it should be deny'd you; but you know you ask what you can't have, and you must not think to impose upon us by these Artifices. Our Eyes and Understandings are left us, tho' you will allow your Proselytes neither.

Gavan. Is there any Harm in asking, if I may not be so try'd?

L. C. J. The Time is far spent, therefore if you have any Witnesses, call them.

Then Mr. *Gavan* call'd four other Witnesses, who depos'd, That he was at *Wolverhampton* the last Week in *July*, for he lodg'd in the same House with them; and one of them said, He was confident *Gavan* was at *Wolverhampton* the last Fortnight; and, another, that he did not remember he was absent any Part of *July*.

L. C. J. Mr. *Whitebread*, have you any Witnesses to call.

Whitebread. I desire I may prove that Mr. *Otes* was mistaken in the Evidence he gave at the Tryal against Mr. *Ireland*.

L. C. J. If you wou'd contradict a Witness, you ought to do it in a Matter which is at present in Debate; for if you wou'd convict him of what he said at *Ireland*'s Tryal, we must try *Ireland*'s Cause over again.

Whitebread. If he be convicted of Perjury in one Case, he is not to be believ'd in another.

L. C. J. You say right, if he be convicted; but then you must shew the Record of his Conviction.

Page 308. *Whitebread.* I desire the Jury would observe, that *Otes* does not stick to the Testimony he gave at *Ireland*'s Tryal.

The Jury can take no Notice of what was done at a former Tryal.

L. C. J. They must not take Notice of any Thing that was done at a former Tryal, except it be spoken of now.

Harcourt. If our Witneſſes can't be look'd upon as good Witneſſes, there can be no Commerce with any other Country: I am charg'd with ſeveral Things by *Bedloe*, *Prance*, *Otes*, and *Dugdale*; if the Witneſſes, I bring, are not to be believ'd, becauſe they are Roman Catholicks, I am in a hard Caſe.

L. C. J. *North.* By our hearing them, it ſhews we look upon them as good Witneſſes, or we ſhou'd not hear them at all; but a Witneſs is of more or leſs Credit according to the Circumſtances; therefore it is a proper Queſtion, in this Caſe, to aſk them if they be Roman Catholicks.

Harcourt. My Lord, the Witneſſes, on the other Side, are every one of them known to be bad and flagitious Perſons; they are Men of deſperate Fortunes, and get a Living by ſwearing. —— My Lord, Mr. *Otes* ſwears that Mr. *Ireland* was by when the 80*l.* was paid at my Chamber in *Auguſt*, and I have Witneſſes to prove he was then in *Staffordſhire.*

The Priſoners urge that the Witneſſes againſt them are Men of infamous Characters.

Otes. I never ſaid ſuch a Word.

Gavan. And he ſaid, That the 2d of *September* he borrow'd 20*s.* of Mr. *Ireland* at his Chamber, when Mr. *Ireland* was at *Boſcobel.*

Otes. I was not poſitive to the Day.

Gifford. My Lord, I was here at that Tryal, and teſtify'd I ſaw Mr. *Ireland* in *Staffordſhire* the 24th of *Auguſt*, being *Bartholomew* Day and the Day after: Then ſays *Otes*, I cannot be ſo particular as to that; but the 1ſt or 2d of *September* I ſaw Mr. *Ireland* at Mr. *Harcourt*'s Chamber by this Circumſtance, for I then borrow'd 20*s.* of Mr. *Ireland.*

Mr. J. *Pemberton.* Do not inſiſt on that, it hath receiv'd a Tryal.

L. C. J. *North.* Come come, you muſt not charge him with what he ſaid in *Ireland*'s Tryal.

Otes. My Lord, I charge *Harcourt* and not *Ireland* with being at *Wildhouſe*, and that there *Coleman* met him, and the Money was carry'd back to *Harcourt*'s Chamber, and there given to the Meſſenger.

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L. C. J. I am mistaken if you have not testify'd that *Ireland* was in Town in *August* and *September* with *Harcourt*. They must have Right done them, they say: People may swear Things down-right, but we must be at Liberty to disprove them as we can.

Otes. My Lord, I said that Mr. *Ireland* took his Leave of us between the 8th and 12th of *August*, at Mr. *Harcourt*'s Chamber, and Mr. *Fenwick* was there.

L. C. J. Did not you say that *Fenwick* convers'd with *Ireland* in *August* concerning the carrying on of the Plot.

Otes. Yes, my Lord.

L. C. J. In doubtful Cases, when Men are for their Lives, I had rather hear what is impertinent, than prevent Men making a full Defence.

L. C. J. *North*. I had rather hear Things at a Venture, than forbid Things at a Venture.

The Lady *Southcott* appear'd.

The Prisoners prove that *Ireland* was not in *London*, when *Otes* swore he was at Mr. *Harcourt*'s there.

She testify'd, That *Ireland* was with her from the 5th of *August* to the 15th.

Sir *John Southcott* appear'd.

My Lord, Mr. *Ireland* travel'd with us from the 5th of *August* to the 9th. We went from St. *Albans* to my Lord *Aston*'s at *Tixhall*; I saw him there the *Thursday*, *Friday*, *Saturday*, and *Monday* following, and on *Tuesday* he went with us farther into the Country; and I saw him the *Wednesday*, *Thursday*, and *Friday* afterwards: I saw him at least twelve Days.

Sir *Edward Southcott* appear'd.

The 3d of *August* Mr. *Ireland* came down to my Lord *Aston*'s at *Standen*, as they said, but I saw him there early next Morning; the 5th we went together to St. *Albans*, and so kept on to *Tixhall*; I was in his Company from the 4th to the 16th.

Mrs. *Harwell* and her Daughter appear'd.

They depos'd, That Mr. *Ireland* came to their House at *Wolverhampton* in *Staffordshire*, the 17th of *August*, and was there 'till the 26th, except one Day when he went to *Litchfield*.

Page 310.

Elizabeth Keyling appear'd.

She depos'd, That ſhe ſaw Mr. *Ireland* at *Wolverhampton* on *Saturday* the 17th of *Auguſt*, and that he was there 'till the *Monday* following, when the Deponent went to ſee her Mother; that ſhe found him there when ſhe return'd thither the next *Thurſday*, and he continu'd there 'till the 26th.

Mr. *Pendrel* and his Wife appear'd.

They depos'd, That they kept the *Royal Oak* at *Boſcobel* in *Staffordſhire*, and that Mr. *Ireland* din'd there the 2d and 3d of *September*.

L. C. J. You might as well have left ſuch trivial Evidence as this alone.

Mrs. *Gifford* appear'd.

She depos'd, That ſhe ſaw *Ireland* at *Wolverhampton* the 17th of *Auguſt*, and that he ſtaid there 'till the 26th; that ſhe ſaw him alſo the 2d, 7th, 10th, and 11th Days of *September*.

L. C. J. Was it the ſame that was executed.

Mrs. *Gifford*. My Brother, who ſaw him executed, ſaid it was the ſame.

Mr. *Gifford*. I ſaw him in the Country, and ſaw him executed.

Another Mrs. *Gifford* appear'd.

She depos'd, That ſhe ſaw *Ireland* at *Pancraſs* Fair in *Staffordſhire*, the 7th of *September*, and that ſhe afterwards ſaw him try'd.

Mr. *Bedle* appear'd.

He depos'd, That he ſaw *Ireland* at *Millage* in *Staffordſhire* the 2d of *September*.

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Captain *Hill* was call'd.

He depos'd, That *Bedloe* was a Priſoner in the *Marſhalſea*, and liv'd upon the Common Baſket.

L. C. J. But he might be an honeſt Man for all that.

Whitebread ſhows that *Bedloe* muſt be perjur'd at one of the Tryals.

Mr. *Whitebread*. Mr. *Bedloe* at my laſt Tryal depos'd, That he had nothing to ſay againſt me, and now he charges me with great Matters, ſo that 'tis evident he has falſify'd his Oath; for if he was then ſworn to depoſe the Truth, the whole Truth, and nothing but the Truth, and he did not ſwear the whole Truth, he was perjur'd; and if he did do it then, he can have nothing againſt me now.

L. C. J. *North.* He says he was in Treaty with *Reading*, and, to beget a Confidence in him that he would serve the Popish Lords and bring them off, he was easy to you, and lessen'd his Evidence at that Time: You have your Objection, and it ought to be observ'd to the Jury; but repeating of it now signifies nothing.

Sir *Cr. Levins* Observations on the Evidence.

The Prisoner producing no more Witnesses, Sir *Cr. Levins* made some Observations upon the Evidence that had been already given: And first, He took Notice that a great Part of the Prisoners Defence consisted in endeavouring to invalidate the Testimony of Mr. *Otes*; but that as to *Whitebread*, *Fenwick*, and *Harcourt*, there were two Witnesses besides Mr. *Otes*; and as to Mr. *Otes*'s Testimony, he did not Doubt to make it appear credible, notwithstanding their Objections: That as to *Hilsley*'s saying he did not come over with him, there was *Otes*'s Oath on the other Side, who had fortify'd his Testimony by that Circumstance of *Hilsley*'s losing his Money at Play as they were coming: That as to the rest of St. *Omers* Witnesses, how exact soever they were as to the 1st of *May*, which was the Point of Time in Dispute, as to the other Times, they had appear'd to be mistaken, and to differ from one another more than eight Days, which was as much Time as the King's Council requir'd for *Otes*'s Journey hither; and altho' the St. *Omers* Witnesses were so very positive as to those eight Days in particular, yet they being mistaken more than that in other Times they were examin'd about, their Testimony was not to be rely'd on as to the Time they mention'd. —— He insinuated also, That the Witnesses were not positive that Sir *Tho. Preston* and Sir *John Warner* were at *Liege* and *Watton* at those Times they were brought to prove them there; and said, that *Gavan*'s Witnesses could only testify positively his being at *Wolverhampton* the last Week in *July*, from whence he inferr'd he was not there at the other Times they spoke to, in which they were less positive: As to that Number of Witnesses who had said Mr. *Ireland* was out of Town in *August*, when Mr. *Otes* had sworn he was in Town, he insinuated, That Mr.

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Otes's

Otes's Oath ought to be reckon'd equivalent to their Teſtimony, becauſe they did not deliver it upon Oath; and, beſides, he had another Witneſs to coroborate what *Otes* had depos'd on that Head: Whereupon

Sarah Paine was call'd.

She depos'd, That ſhe had liv'd at Mr. *Grove*'s, where Mr. *Ireland* uſed to come, and ſhe knew him very well; and from Mr. *Grove*'s ſhe went to live with the Lord Chamberlain, and that ſhe ſaw Mr. *Ireland* at his own Door in *Ruſſel-Street*, about ſeven or eight Days before, which was a Week before the King went to *Windſor*; that ſhe ſaw his Face, and made him a Curteſy, but did not ſpeak to him.

Otes produces a Witneſs to coroborate his Teſtimony concerning *Ireland*'s being in Town.

Sir *Thomas Doleman* was call'd.

L. C. J. What Time in *Auguſt* did the King go to *Windſor* laſt Summer?

Sir *Tho. Doleman*. I can't charge my Memory; but I believe it was the 12th, or 13th.

William Walker was ſworn.

He depos'd, That he met Mr. *Otes* in St. *Martins Lane*, going towards *Leiceſter Fields*, the latter End of *March* or the Beginning of *April*, 1678; that he was diſguis'd in a grey Searge Coat, and a grey Hat; that he cou'd not recollect who it was then, but the next Morning he remember'd it was *Titus Otes*, and that he went to a Gentlewoman's where he had ſeen *Otes* a Year before, and aſk'd her how Mr. *Otes* did, and ſhe ſaid he was turn'd Papiſt and abſconded, and ſhe did not know where he was; and that the Deponent told her he had ſeen him about 9 or 10 a Clock the Day before.

And as to his own being here at the Time of the Conſult.

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Mrs. *Ives* was ſworn.

She depos'd, That about the Middle of *April* was Twelvemonth, Mr. *Walker* came to her, and aſk'd her, When ſhe had ſeen Mr. *Otes*, and ſhe anſwer'd, Not ſince he went beyond Sea, and Mr. *Walker* ſaid, He ſaw him in a Diſguiſe the Day before in St. *Martins Lane*, as he was going to *Leiceſter Fields*, and that they look'd wiſhfully at one another, and he was ſure it was he.

Mrs. *Mayo* was call'd.

Several other Witneſſes depoſe, he was in *London* at the Time of the Conſult.

She depos'd, That ſhe was a Servant of Sir *Richard Barker's*; and that about a Week before *Whitſontide*, (which, ſhe ſaid, was in *May*) *Otes* came thither, diſguis'd in a white Coat and a Peruke; that ſhe had never ſeen him before, but a young Man who was in the Family told her, it was he, and was laughing at him for his Habit; that about a Week after he came again, and brought another with him; that he walk'd in the Garden, and ſeem'd diſcontented the Family took no more Notice of him; and that indeed the Family had heard he was turn'd Catholick, which was the Occaſion of it: That ſhe went to ſee Mr. *Otes* afterwards, when he came to give his Evidence about the Plot, and ſhe was ſure it was the ſame Man ſhe ſaw in *May*, the Week before *Whitſontide*, at Sir *Richard Barker's*.

Page was ſworn.

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He depos'd, That he was Servant to Sir *Richard Barker*, and that in the Beginning of *May* laſt Year (1678), *Otes* came and enquir'd for Sir *Richard Barker*; that the Deponent knew him, and aſk'd him, where he had been for ſo long Time? but he gave him no Account; and that after *Otes* had been in the Houſe, he went away again: That he remember'd he had a light-colour'd Campaign Coat on, and a black flapping Hat on, and *Spaniſh* Leather Shoes.

L. C. J. How do you know this was in *May*? Might it not be in *April*?

Page. Becauſe my Maſter had a Patient then ſick of a Fever at *Iſlington*.

Juryman. We would know what that Patient's Name was?

Sir *Richard Barker.* It was ——— *Milver's* Daughter.

Sir *Richard Barker* was ſworn.

He depos'd, That he had known *Otes* from a Child; and that he ſaw him laſt Summer in *June* or *July*, he thought it was in *June*, but that his Servants, particularly his Coachman, told him, they had ſeen him in *May*, before *Whitſontide*, and that he was in two ſeveral Diſguiſes, once he had

ſhort

ſhort Hair, and then they thought he was turn'd Quaker; another Time a long Wig, and then they thought he was turn'd Papiſt; and that he came to enquire for Dr. *Tongue*.

Butler, Sir *R. Barker*'s Coachman, was ſworn.

He depos'd, That the Beginning of *May* was Twelve-Month, *Otes* came to his Maſter's Houſe in *Barbican*; that the Deponent was cleaning his Coach in the Gate-Houſe, and *Otes* came and aſk'd him for Dr. *Tongue*, whom the Deponent told him was not at Home; however, *Otes* went into the Houſe, and return'd immediately again, and ſeem'd very much diſcontented as he paſs'd by: That his Hair was cropt cloſe to his Ears, and he had a grey Coat on; and that the Deponent ſaw *Otes* about ſix Weeks after, and he had a long black Coat and a Peruke on.

L. C. J. How ſoon, Sir *Richard*, did he tell you *Otes* was firſt there?

Sir *Richard Barker*. He told me as ſoon as I came Home, in *May* as I remember, and told me what Habit he was in, and I wonder'd at it. Page 315.

Smith was ſworn.

He depos'd, That he knew *Otes* very well, for he was a Scholar at *Merchant-Taylor*'s School when the Deponent was Uſher; and that *Otes* din'd with the Deponent at his Houſe at *Iſlington* the Beginning of *May* laſt, *viz.* the firſt *Monday* in *May* 1678; that he had a Summer Suit on, and a green Knot upon his Shoulder; and that they diſcours'd of *Otes*'s Travels, and of his having been in *Spain* and *Flanders*; and that the Deponent knew of his being turn'd Catholick then; that the Deponent did not ſee him any more till about the Middle of *Auguſt*.

Clay, the Prieſt, was ſworn.

He depos'd, That he met Mr. *Otes* at Mr. *Charles Howard*'s in *April* was Twelve-Month, and that he thought he ſaw *Otes* there a ſecond Time in *May*.

Whitebread. At my firſt Tryal, when *Otes* was preſs'd to declare who had ſeen him here in Town, he could not name one, but ſaid, He had not ſeen much Company, and ſtaid but ſix Days: Now

Whitebread obſerves, that *Otes* contradicted his own Witneſſes.

Now, he came over, he says, the 17th of *April*, and his Witnesses say, he was here the Beginning of *May*, which must make him here a great deal above six Days. How inconsistent are these Things?

Page 36. L. C. J. You make your Defence to depend upon an Uncertainty of Time, which no Man can ever remember; and pray observe, Mr. *Otes* appears a good Witness, till you impeach his Testimony by a Fry out of your own Schools, who swear to *April*, *May*, and *June*, in which they are contradicted by the other Witnesses, who thereby make Mr. *Otes* an upright Witness again. The Evidence is now concluded; say what you can for your selves, and we will observe what you object, and direct the Jury according to our Consciences.

Gavan proceeds in his Defence.

Gavan observ'd to the Court, That he was charg'd by one Witness, with a Fact committed in *London*, and by another Witness, with another Fact committed in *Staffordshire*, which was in another County; and he desir'd to be advis'd, whether these could be deem'd two Witnesses, such as the Law requir'd, to convict him of Treason? To which the Court answer'd, That this Matter

Page 317. had been settled at the King's-Bench Bar in Sir *Henry Vane*'s Case, who being indicted for levying War; and one Witness proving the levying War in one County, and the other his levying War in another County, tho' they were but single Witnesses of single Facts, yet both coming up to the Charge in the Indictment, they were adjudg'd sufficient to maintain it: So here, if one Witness prov'd a Conspiracy to kill the King in this County, and another proves a Consult with other Persons against the King's Life in *Staffordshire*, these are two Witnesses to the same Treason, and sufficient in Law.

If one Witness proves an Overt-Act in the County where the Indictment is brought, another Witness may prove another Overt-Act in another County, and that is sufficient to convict a Man of Treason.

Then *Gavan* address'd himself to the Jury, and made Protestations of his Innocence, and averr'd, That he was not of Age to be at the Consult in *April*, and appeal'd to them, Whether the two Witnesses produc'd against him could be deem'd credible Witnesses; saying, No Man could be

deem'd

deem'd a good Witneſs who was not an honeſt Man. Then he inſinuated, That Mr. *Otes* being turn'd out of the College at St. *Omers*, and diſguſted, that might be the Ground of his Malice againſt them. Beſides that, *Otes* had been falſify'd in his Teſtimony as to Sir *Thomas Preſton* and Sir *John Warner*'s coming over; and as to *Ireland*'s being in *London* in *Auguſt*, by ſixteen Witneſſes, who had prov'd him to be in *Staffordſhire*; and that tho' he was not convicted of theſe Perjuries before, yet they made him appear no credible Witneſs; nor could the Teſtimony of the Woman, who only ſaid, She ſaw *Ireland* and made a Curteſy to him, be thought equivalent to thoſe ſixteen Witneſſes who convers'd with him daily in *Staffordſhire*; and that *Otes* evidently confuted his own Witneſſes by affirming, He came over with *Hilſley*, and ſtaid but ſix Days, when they make him here in *May* many Days after. —— That as to the Witneſſes not being ſo poſitive of his being at *Wolverhampton* the reſt of *July*, as they were of the laſt Week, there was great Reaſon for it, becauſe he was then ſhut up in his ſpiritual Exerciſe; and for the other Weeks, they rather believ'd him there than not, and left it to them, whether it was probable he was with Father *Aſhby* in *London*, when *Otes* ſwore *Aſhby* came to *London* the Middle of *July*, and ſtaid there but a Fortnight. He confeſs'd, He knew *Dugdale* at my Lord *Aſton*'s five or ſix Years, and had convers'd with him in Mr. *Ewers*'s Chamber, but never of any treaſonable Matter; but that *Dugdale* ran away from my Lord *Aſton*'s, having loſt 300 *l.* of my Lord's Money. —— The Court told him, He muſt not tell a Story out of this or that Lord's Mouth, or fall upon the Witneſſes, unleſs he had Evidence to prove what he charg'd them with. —— *Gavan* deſir'd the Court would compare the Number of the Witneſſes they brought to prove *Otes* at St. *Omers* with thoſe that depos'd he was here, and that they would conſider, thoſe young Men at St. *Omers* eat and convers'd with him every Day; whereas the other Witneſſes ſpoke but to one or two particular Days,

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Days, and one of them saw him but in a Disguise. Then he concluded and said, That as he hoped to see the Face of God he was innocent of what he was charg'd with; and pray'd God to bless the King and the honourable Court.

Whitebread insists on the Improbability of the Evidence given against him.

Whitebread repeated his Observation of the Improbability of his putting those Words in the Letter to Mr. *Ewers*, *That he should provide stout Men, who were hardy and desperate, to kill the King*; and said, He did not look like a fighting Man, and if he was, no Man could think him so mad to beat one to whom he had committed such a Secret as *Otes* had depos'd. And he said, It was strange there should be a Plot wherein it was pretended so many Persons of Honour and Quality were concern'd, and yet no Footsteps of it appear; and then he commended himself to God Almighty and the Jury.

As does *Fenwick*,

And urges the Scandalous Lives of their Accusers, to invalidate their Testimony.

Mr. *Fenwick* urg'd, That it was not probable that so many innocent Children, brought up in a virtuous Life, should come over to attest a Falsehood; and that the Witnesses on the other Side were People of a poor beggarly Condition, who thought to advance their Fortunes by such a pretended Discovery: That it could not be suppos'd they should trust *Otes* with the Sight of such Letters and such Secrets as he pretended, being a Person they never esteem'd, and had expell'd the College; that none of the Commissions or Letters he mention'd appear'd, or could it be prov'd that any Money was paid, or Arms provided, tho' it was three Quarters of a Year since the first Discovery; and that there was no manner of Reason to induce the Jury's Belief of what he said, nothing but downright Swearing. Then he repeated several other Arguments that had been urg'd before by Mr. *Gavan*; and added, That no Body could blame their Lives, or show they had been guilty of any Thing before; but the World knew how scandalously their Accusers had liv'd.

Harcourt said, he was 70 Years of Age, and had never been charg'd with any Crime before, and hoped Innocence would find some Advocates upon the Bench.

Mr. *Harcourt* said, He had liv'd to seventy Years of Age, and had never before been accus'd of any Thing for which he could be brought before a Magistrate; and having repeated some of the Argu-

Arguments that had been urg'd before, ſaid, He left himſelf to the Bench, and hoped Innocence would find ſome to defend it; and that if their Accuſers had brought any Reaſon to concur with their poſitive Oaths, it had been ſomething.

Mr. *Turner* only demanded, If *Otes* and *Bedloe* ought to be deem'd credible Witneſſes, who, for their ſcandalous Lives, had been debarr'd the Sacrament; for Proof whereof he call'd one *Haſtings*, but he did not appear.

Page 319. *Turner* only objected the infamous Characters of the Proſecutors.

Then the Lord Chief Juſtice gave his Directions to the Jury. He told them, That the Teſtimony of the Witneſſes from St. *Omers* was of much leſs Weight than the Evidence that had been given on the other Side, not only becauſe it was upon Oath, (tho' he doubted not but the St. *Omers* Lads would have ſworn it if they might) but becauſe the Teſtimony of a Papiſt was not to be credited, with or without Oath, ſince they were of a Religion that could diſpenſe with Oaths, tho' falſe, for the Sake of a good Cauſe. ——— That therefore the Teſtimony of theſe young Men, who had been ſent for for this Purpoſe, and had been train'd up in ſuch Principles, was very much to be ſuſpected. He obſerv'd, That the Priſoners Defence conſiſted in catching at a Point of Time; but that was a Thing no Man could charge his Memory with. (Say they) If *Otes* came here the 20th of *April*, how could they ſee him here the 1ſt of *May*! But he told the Jury, They were not to govern their Judgments by a Miſtake of ſeven or eight Days; and appeal'd to them, if they were not often miſtaken a Week, or a Month, in their ordinary Affairs; tho' he did own, this Circumſtance was conſiderable, yet he ſaid, they ſhould not lay too great a Weight upon it. That altho' there had been Witneſſes produc'd to prove, that Sir *Thomas Preſton* and Sir *John Warner* did not come over with Mr. *Otes* as he had ſworn; yet if the ſixteen from St. *Omers* were not to be believ'd, neither were they; for they never wanted Witneſſes to prove what they pleas'd, none of them made any Bones of it. Then he inſiſted much on

The Lord Chief Juſtice directs the Jury.

And tells them, That Papiſts would ſay or ſwear any Thing to promote their Cauſe, and therefore the Teſtimony of the Priſoners Witneſſes, how numerous ſoever, was not to be regarded.

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And that a Miſtake of 7 or 8 Days ought not to influence their Judgments, tho' *Otes* and his Witneſſes ſeem to differ about the Time of his being here.

Mr. *Har-*

Insists much on Mr. *Harcourt's* Letter about Sir *E. Godfrey.*

Mr. *Harcourt*'s Letter, which *Dugdale* intercepted the *Monday* after Sir *E. Godfrey* was missing, wherein is that Expression, *This Night Sir* E. Godfrey *is dispatch'd*, which was the *Saturday* Night the Letter was dated; this, he said, was an undeniable Evidence that the Papists murder'd him,

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because he was not known to be dead till the *Thursday* following by other People; and this, he said, must turn every Protestant's Heart against them, and that the Plot was in a great Measure prov'd by that Murder. Then he observ'd to the Prisoners, That this was but a Specimen of what they intended, and none knew where they would end; that they had kill'd but one Man's Person, but in Effigy the whole Nation; that it was but in one Man's Blood their *Hands* were embru'd, but their *Souls* were dipp'd in the Blood of all; and that they would kill the King, or any Body else, that stood in the Way of their Religion. —— A Religion which, he says, they would bring in upon us by a Conversion of us with Blood, and by a Baptism of Fire. ——— After this Digression, he said, That tho' the Prisoners Defence depended on a Point of Time, yet it ought to be well consider'd, and God forbid but they should be equal to all Men: But then he added, That as to the Prisoners disproving *Otes* to be here, or Mr. *Ireland*'s Absence in *August*, they were not the proper Business of this Day, but had receiv'd a Verdict before; and that if *Ireland*'s Jury had not been satisfy'd he was in *London*, they could not have found him Guilty; and then he left it to them, and bid them consider of their Verdict.

And says, the Plot was sufficiently prov'd by that.

Then he inveighs against the bloody Principles and Practices of the Papists.

But says at length, that those Circumstances, in Point of Time, which the Prisoners insisted on, were of Weight.

He opposes the Verdict against *Ireland*, to the Testimony of the Witnesses who depos'd he was out of Town, and then concludes.

After a Recess of a Quarter of an Hour, the Jury came in with their Verdict, That they were all Guilty.

Page 322. The Prisoners are all convicted.

Then (the Judges being gone off the Bench) Mr. *Recorder* said, That the Prisoners had not been wanting to themselves in offering, nor the Court in hearing what they could say for themselves, but upon a long Evidence, and a full discussing of all the Objections, they had been found Guilty; and he thought every honest Man would say,

Sir *Geo. Jefferies* Recorder.

The Recorder approves the Verdict.

They

They were unexceptionably found so, and that it was a just Verdict the Jury had given.

N. B. After Mr. *Langhorn* was try'd, they receiv'd their Sentence with him.

The TRYAL of RICHARD LANGHORN, *Esq*; *at the* Old Bayly, London, *the* 14*th of* June, 31 Car. 2. 1679, *for High Treason.*

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The Indictment for High Treason, in compassing the King's Death.

THE Indictment sets forth, that the said *Richard Langhorn*, on the 30th Day of *September*, in the 30th Year of the King, at the Parish of St. *Dunstans* in the West, in the Ward of *Farringdon* without, *London*, did traitorously compass and intend to stir up Sedition and Rebellion, to depose his Majesty and put him to Death, and to subvert and alter the Government and Religion establish'd. And to that purpose, at the Time and Place aforesaid, did, advisedly, maliciously, and traitorously, contrive and write two Letters, to be sent to Persons unknown at *Rome* and St. *Omers*, to procure the Aid and Assistance of the Pope and the *French* King. And that, in farther Prosecution of the said Treasons, the said *Richard Langhorn*, at the Time and Place aforesaid, did contrive and write two other Letters to be sent to *Rome*, to *Christopher Anderton*, Rector of the *English* College there, and two other Letters, to be sent to St. *Omers*, to divers Persons unknown there residing. And that, by the said respective Letters, he did traitorously advise the Pope, and the said *Christopher Anderton*, and the said other Persons unknown, of the Ways and Means for accomplishing the aforesaid Treasons, and did solicit their Aid and Assistance therein: And that the said *Richard Langhorn*, the Day and Year aforesaid, did deliver out the said Letters, to be sent to the Persons aforesaid. And the Indictment farther sets forth, That the said *Richard Langhorn*, in farther Prosecution of his said traitorous Purposes, did re-

1. *Overt Act*, Writing Letters to solicit Aid from the Pope, *&c.* and sending them.

Page 323.

ceive

2. Receiving Commissions for Civil and Military Offices from *Rome*, and distributing them.

ceive five several Commissions in Writing, made by Authority deriv'd from the See of *Rome*, for constituting military Officers to command the Forces to be rais'd in these Kingdoms, for executing the Treasons aforesaid. And that he likewise receiv'd five other Commissions, for constituting Civil Officers in this Kingdom, after these Treasons should be perfected: And the same Commissions did deliver out and distribute to divers false Traitors, to the Jurors unknown: And that he also receiv'd a Commission for himself to be Advocate General to the Army intended to be rais'd. And the Indictment farther charges, That whereas *Ireland*, *Pickering*, and *Grove*, together with other false Traitors, did, on the 24th of *April*, consult and agree to kill the King, and alter the Religion, *&c.* The said *Richard Langhorn* was privy to the said last mention'd Conspiracy, and did traitorously conceal and consent to the same, and did aid, council, and abett the said *Ireland*, *Pickering*, and *Grove* therein: And farther, that on the Day and Year abovesaid, the said *Richard Langhorn* did move and solicit the Benedictine Monks to expend and pay the Sum of 6000 *l.* to procure a Person to kill the King: And whereas *Edward Coleman*, and other false Traitors, had form'd a Conspiracy to destroy the King, and subvert the Government and Religion establish'd, and that *Coleman* had written to *Le Chaise*, the *French* King's Confessor, to procure the Assistance of the *French* King to accomplish his said Treasons, the said *Richard Langhorn*, being privy to the said last mention'd Treasons, did comfort, council, and abett, the said *Edward Coleman* to perpetrate and accomplish the same, against the Duty of his Allegiance, the King's Peace, *&c.*

3. Consenting to the Jesuits Conspiracy to kill the King, and procuring 6000 *l* of the Benedictine Monks for that Purpose.

4. And abetting *Coleman*'s Conspiracy.

Page 324. The Jurors being call'd, the Prisoner made no Challenges, and a Jury was sworn. Then Mr. *Roger Belwood* open'd the Indictment, and Sir *Cr. Levins* exaggerated the Charge against the Prisoner. After which Mr. *Dugdale*, one of the King's Witnesses, was sworn.

Dugdale

Dugdale depos'd, that there had been a Plot to kill the King, and he was to have been one of the Assassins; that four Jesuits put him upon it, *viz. Ewers*, *Gavan*, *Fason*, and *Vavasor*; and that afterwards there was to have been an Army rais'd, and the Protestants were to have been massacred. That these Things were consulted of at my Lord *Aston*'s House at *Tixall*, and at Mr. *Gerard*'s House at *Boscobel* in *Staffordshire*. He depos'd farther, that the *Monday* after Sir *E. Godfrey* was kill'd, he saw a Letter at *Tixall* from Mr. *Harcourt* to Mr. *Ewers*, dated the *Saturday* before, with this Expression, (*Viz.*) *This Night Sir* E. Godfrey *is dispatch'd*. And that the Deponent heard the Jesuits kill'd him, because he was too much privy to their Consultations: And said, they were afraid of Mr. *Coleman* too, that he carry'd Things too high, and he was out of their Favour for two Years.

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Evidence of the Plot in general.

Then Mr. *Prance* was call'd and sworn.

Prance depos'd, that he was told by my Lord *Arundel*'s Butler, that one *Messenger*, Gentleman of the Horse to my Lord *Arundel*, was employ'd by my Lord *Arundel* and the Lord *Powis* to kill the King, and was to have a good Reward for it: That the Deponent afterwards ask'd *Messenger* why he would kill the King, and he answer'd, he was off of it then. *Prance* farther depos'd, that after the King was kill'd, there was to be an Army of 50000 Men rais'd to settle the Catholick Religion, which was to be commanded by the Lord *Arundel*, *Powis*, *&c.* as he had heard *Fenwick*, *Ireland*, and *Grove* say when they were together: And that the Protestants were to be kill'd and ruin'd, as *Fenwick* told the Deponent. That he heard *Harcourt* say the King was to be kill'd by several, and *Fenwick* said, that Mr. *Langhorn* (the Prisoner) was to have a great Hand in it.

Hearsay Evidence admitted.

Otes was call'd and sworn.

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Sir *Cr. Levins*. Pray acquaint the Court what Letters *Langhorn* writ, and what Commissions he receiv'd.

Otes. In *April*, 77, I went to *Spain*. In *September* following, Mr. *Langhorn*'s Sons came thither; one was a Scholar in the *Engliſh* College at *Madrid*, the other at *Valledolid*; they came thither to qualify themſelves for Prieſts Orders. In *November* following, my Buſineſs bringing me to *England*, they ſent ſome Letters by me to their Father, which I deliver'd him at his Chambers in the *Temple-Lane*, and told him I thought his Sons wou'd enter into the Society, at which he rejoyc'd, being himſelf a great Votary to the Society, and he ſaid, he hoped, if they continu'd in the World (as ſecular Prieſts) they would ſuddenly have great Promotion in *England*, for Things wou'd not long continue in the Poſture they were. The latter End of *November*, O. S. a little before I went to St. *Omers*, I was with Mr. *Langhorn* again, and he gave me a Pacquet of Letters to carry thither, which I did; and when the Pacquet was open'd, there was one Letter from him to the Fathers, thanking them for their Care of his Sons, and he therein ſaid, he had written to Father *Le Chaiſe* about their Concerns; but that Mr. *Coleman* had been ſo large, it was not neceſſary to trouble his Reverence with larger Epiſtles at that Time: There was another Letter to the Fathers from Mr. *Langhorn*, in *March* or *April*, concerning an extravagant Son he had in *France*, and, therein, he expreſs'd his great Care for carrying on the Deſign of the Catholicks; and he ſaid, in Effect, that the Parliament began to flag in promoting the Proteſtant Religion, and now they had a fair Opportunity to begin and give the Blow.——

Otes's Evidence of ſome Letters Mr. *Langhorn* ſent to St. *Omers*.

In *April*, or the Beginning of *May*, ſeveral of us came over from St. *Omers* to the Conſult, and two or three Days after this Conſult, I had Orders from the Provincial to give Mr. *Langhorn* an Account of what Reſolutions paſs'd at the Conſult.—— And I acquainted Mr. *Langhorn*, that Father *Cary* was order'd to go Procurator to *Rome*; that ſeveral of the Fathers were to be admoniſh'd for their irregular Living; and I told him there was a Reſolve ſign'd, that *Pickering* and

Of his acquainting him with what paſs'd at the Conſult, and his praying for the Succeſs of it.

and *Grove* should go on with their Attempt to assassinate the King; that *Grove* was to have 1500 *l.* as a Reward, and *Pickering* 30000 Masses said for him: And Mr. *Langhorn* lift up his Hands and Eyes, and pray'd God it might have good Success.——— And, my Lord, I saw in Mr. *Langhorn*'s Study, in the *Temple*, a Commission for my Lord *Arundel* of *Wardour* to be Lord Chancellor of *England*, and another for my Lord *Powis* to be Lord Treasurer, one for my Lord *Stafford* to be Pay-Master in the Army, and another for the Prisoner to be a Judge in the Army, or Advocate General: And there was a Commission for my Lord *Bellasis* to be a General in the Army, and for my Lord *Petre* to be Lieutenant-General, and another Commission for *Coleman* to be Secretary of State: These were by an Authority deriv'd from the Pope, and sign'd, *Johannes Paulus de Oliva*, with the Jesuits Mark, being a Cross thro' the Letters J. H. S.

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Of the Commissions receiv'd from *Rome*.

L. C. J. How came you to see these Commissions?

Sir *Will. Scroggs* Lord Chief Justice.

Otes. We had Notice they were come by a Letter from Father *Anderton*, and I ask'd Mr. *Langhorn* to let me see them; and I having been privy to the Consult, he shew'd them me. I think I look'd over seven or eight, but there was a great many more for inferior Officers, I believe there might be fifty, and I saw most of them in the Prisoner's Custody. And, my Lord, the same Day in the Afternoon, the Prisoner gave me some original Letters from *Le Chaise* and Father *Anderton*, who is Rector of the College at *Rome*, to carry to the Fathers; these were in Answer to some Letters the Prisoner had sent them; and therein *Le Chaise* assures him of his Constancy in assisting the Society to carry on the Cause, and says, he need not doubt but the *French* King wou'd stand by them:——— But I can't say these Letters were directed to Mr. *Langhorn*.

Sir *Cr. Levins.* What do you know of the Money to be rais'd by the Benedictine Monks?

Otes. Mr. *Langhorn* was Solicitor to the Society, and being ſpoke to by the Fathers about it, he ſaid he wou'd ſtir in it; and upon his ſoliciting the Benedictines, I have heard they promis'd 6000 *l.* towards carrying on the Cauſe: And another Thing I remember, namely, that Mr. *Langhorn* was diſguſted with Sir *George Wakeman*, that he was not contented with 10000 *l.* for poiſoning the King, and ſaid he was a covetous Man, and a narrow-ſoul'd Phyſician, and that it being a publick Concern, and to carry on the Cauſe, he might have done it for nothing.

Hearſay Evidence again.

Then a Writing under the Jeſuits Seal, conſtituting Mr. *Stapleton* Rector of St. *Omers*, was ſhewn Mr. *Otes*; and he ſaid, that was the ſame Hand and the ſame Seal that was to the Commiſſions he mention'd:

Mr. *Langhorn.* When did you arrive at St. *Omers?*

Otes. I think the 10th of *December*, N. S.

L. C. J. All their Defence lies in Catches in a Point of Time, in which no Man can be poſitive.

Langhorn. How long did you ſtay there?

Otes. 'Till *April* without ſtirring, except that I went to *Paris*, and a Night or two to *Watton*.

Langhorn. When did you come to *England?*

Otes. About the Middle or latter End of *April*, and I ſtaid here under twenty Days: Father *Williams*, Father *Marſh*, the Rector of *Liege*, and Sir *John Warner*, came over with me, and Sir *Tho. Preſton*, and Mr. *Pool*, and, I think, Sir *Robert Brett*.

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Langhorn. I deſire to know how he came from *Dover*, whether in the Coach or on Horſeback, to *London?*

Otes. The Queſtion is ſo ſudden, I can't be poſitive.

Langhorn. In a Tryal in the King's Court, he ſaid he came by Coach, in Company with Mr. *Hilſley*.

Otes. No; I ſaid I came over in the Packet with Mr. *Hilſley*, but he left us on the Road.

Langhorn. I deſire to know where he lodg'd when he came to Town?

Otes. I had a Lodging provided for me at Mr. *Grove*'s; I can't say I lay there the first Night I came to Town, but I lay there three or four Nights while I was in Town.

Langhorn. When did he return to St. *Omers*?

Otes. I think it was a Week in *May* first.

L. C. J. They say, Yesterday you affirm'd you staid but six Days.

Otes. I do not say so, but I say under Twenty.

Langhorn. The Letters he speaks of, did he see me write them?

Otes. I did not see him write them, but I know them to be his Hand; for I saw the Letter wherein he order'd Money to be paid to his Son, which was paid accordingly; and it was the same Hand.

Langhorn. Does he know that *Le Chaise* and *Anderton* writ to me?

Otes. He had Letters subscrib'd with their Names, which he said came from them, and he deliver'd them to me to communicate to the Fathers.

Langhorn. When did he forsake the Protestant Religion and become a Papist?

Otes. It was in *February* or *March*, 1676.

Langhorn. Did he leave his Vicarage before he turn'd Papist?

Otes. It was not very long before. Page 330.

Langhorn. After he turn'd Papist, I desire to know if he became a Jesuit?

L. C. J. You must not ask him a Question that may bring him into Danger.

Langhorn. I ask it, because he says, in one of his Narratives, there came over nine of us, all Jesuits: I desire he may be ask'd, if ever he convers'd with me, or saw me, after he acquainted me with the Consult.

Otes. I think twice or thrice after I came over again in *July*: He wou'd not let me come to his House, but I used to be at his Chamber, for his Wife was a Protestant, and he wou'd say, she was but Ams-Ace turn'd from a Devil, and so I should not come thither.

Bedloe was ſworn.

Bedloe objects to a Papiſt's taking Notes in Court.

He demanded of the Court, before he gave his Evidence, whether a known Roman Catholick might be permitted to take Notes of the Evidence in ſuch a Cauſe: And the Chief Juſtice ſaid he thought not: Then he inform'd the Court, that the Marchioneſs of *Wincheſter* had taken Notes all the Tryal, but the Court ſlighted his Information.

Query, If a Court can hinder one's taking Notes.

Then *Bedloe* depos'd, That about three Years ſince, he was ſent by Mr. *Coleman* and Mr. *Harcourt* to Mr. *Le Chaiſe* and Father *Stapleton*, with Letters for carrying on the Deſign; that he came to Mr. *Coleman*'s Houſe for the Letters, and Mr. *Coleman* took them unſeal'd, and went with the Deponent to Mr. *Langhorn*'s Chamber in the *Temple*, and there Mr. *Langhorn* regiſter'd them, and then Mr. *Coleman* ſeal'd them up and gave them to the Deponent to carry to *Le Chaiſe*.

Mr. *J. Pemberton*. What was the Effect of theſe Letters?

Bedloe. To acquaint *Le Chaiſe*, that they waited only for his Anſwer, how far he had proceeded with the *French* King about ſending the Money, for they only wanted Money, every Thing elſe was ready; that the *Engliſh* Catholicks were ſafe, having procur'd all Places and Offices to be given to Catholicks, or ſuch as they thought wou'd be ſo; that all the Garriſons were already in their Hands, or ready to be put into them. And in the Letter to Father *Stapleton* 'twas ſaid, they had ſo fair an Opportunity, having a King ſo eaſy to believe what was dictated to him by their Party, and the *French* King, at the ſame Time, ſo powerful, if they miſs'd this Opportunity they muſt deſpair of ever introducing Popery into *England*.

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L. C. J. Did the Priſoner write them in a Book, and were you by all the Time?

Bedloe. Yes, my Lord; I and *Coleman* walk'd in the Chamber, while he writ them in his Study; he regiſter'd every Penny of Mony that was paid, and all Tranſactions in Relation to this Concern: And about a Year and half ſince, Mr.

Harcourt

Harcourt sent another Packet of Letters, by me, to Mr. *Langhorn* to be regiſter'd; one of them was from Sir *William Godolphin*, that I had brought before from *Spain*, and it was directed to my Lord *Bellaſis*, and another of them was from the Rector of the *Iriſh* College of Jeſuits in *Salamanca*, the Purport whereof was, that my Lord *Bellaſis*, and the reſt of the Party, ſhould be in a Readineſs, for they had provided ſome *Iriſh* Troops, in *Spain*, to be ſhipp'd at the *Groyn*, who ſhou'd Land at *Milford Haven*, and join my Lord *Powis* in *Wales*; and they ſaid they only waited a Return from *England*, to know what Readineſs they were in there.

L. C. J. Did the Priſoner tranſcribe theſe Letters?

Bedloe. I ſuppoſe ſo, for he afterwards ſent them back to Mr. *Harcourt*; but I ſaw him tranſcribe the Letters Mr. *Coleman* brought to his Chamber, in a Parchment Book three Inches thick, and he ſeem'd to have gotten through two Thirds of the Book then. And Mr. *Pritchard* told me the Commiſſions were come, and Mr. *Langhorn* had them.

Sir *Cr. Levins.* Do you know any thing of a Sum to be rais'd by the Benedictine Monks?

Bedloe. In *May*, 1676, among the Letters I carry'd to *Le Chaiſe*, one was directed to *Stapleton*, a Benedictine Monk, to raiſe the Money they had promis'd to remit to *England*, but no particular Sum was mention'd. Page 332.

L. C. J. Did not you ſee the Commiſſions?

Bedloe. I never ſaw any in Mr. *Langhorn*'s Hands, but Sir *Henry Titchburn* ſhew'd me three at *Paris*, ſign'd by the General of the Order, and ſeal'd with the Jeſuits Seal, which made me take up this Paper; [a Paper he produc'd in Court] for tho' it be a Thing of an indifferent Nature, yet it being written in the ſame Hand and ſeal'd with the ſame Seal the Commiſſions were, I thought it might be worth my while to keep it.

Mr. *Belwood.* Did Mr. *Langhorn* know any Thing of the murdering the King by *Pickering* and *Grove*?

Hearſay again.

Bedloe. I was at Mr. *Harcourt*'s Chamber, and he told me he was going to Mr. *Langhorn*'s Chamber, to take Minutes of what they had done that Morning concerning ſending down thoſe People to aſſaſſinate the King.

Mr. *J. Atkins.* That is no Evidence againſt the Priſoner, being but Hearſay.

L. C. J. Was there ſuch Expreſſions in the Letters *Coleman* ſent, that the Catholicks Arms and Hearts were ready, and exciting the *French* King to invade the Kingdom?

Bedloe. Yes, my Lord, and Mr. *Langhorn* tranſcrib'd thoſe Letters while we were in the Chamber.

Mr. *Langhorn.* Were they long or ſhort Letters, and how many were there?

Bedloe. There were three Letters, one to the *Engliſh* Monks at *Paris*, another to Monſieur *Le Chaiſe*, and a third to the Pope's Nuncio: They were the beſt Part of half a Sheet of Paper. Mr. *Coleman* writ a fine ſmall Hand, and wou'd put a great deal of Buſineſs into a little Paper; the Pope's Nuncio's Letter was ſhort.

Page 333.

Langhorn. Did thoſe Letters expreſs what the Money was to be rais'd for?

Bedloe. Tho' it was not expreſs'd in the Letters what the Money was for, yet, in the Diſcourſe between Mr. *Coleman* and Mr. *Langhorn*, it was plain, it was to deſtroy the Government, and to introduce Popery.

L. C. J. Then they conſulted together after the Letters were tranſcrib'd?

Bedloe. Yes, my Lord.

Otes depoſes 800000 Crowns were rais'd at *Rome* for carrying on the popiſh Plot, and Mr. *Langhorn* had Notice of its being paid at *Paris*.

Otes. My Lord, I omitted to acquaint the Court, that the Congregation at *Rome* did contribute 800000 Crowns, to be ſent into *England*; and Mr. *Langhorn* did enquire concerning that Money, and had Knowledge of the Receipt of it in *France*, as Mr. *Langhorn* ſaid in *July* or *Auguſt* to Father *Kaines* and Father *Fenwick*.

Bedloe. I recollect ſomething more too: Father *Kaines* told me, the Secretary *de propaganda fide*, Cardinal *Barberino*, had ſent a chiding Letter to Mr. *Langhorn*, and the reſt of the Conſpirators, that

that they proceeded no farther, when they had so fair an Opportunity; and he said, he had the Letter in his Hand, which he had just receiv'd at Mr. *Langhorn*'s.

Sir *Cr. Levins* said, They had another Witness to give a general Account of the Plot.

Then *Buss*, the D. of *Monmouth*'s Cook, was call'd; and depos'd, That in *September* last being at *Windsor* with one *Handkinson*, an old Acquaintance lately come from *Italy*, he heard *Handkinson* say to one *Anthony*, who was Servant to the Queen's Confessor, That he had brought over four worthy *Irish* Gentlemen with him, who would do their Business; and desir'd *Anthony* to take a particular Care of them, which this *Anthony* promis'd he would.

Upon this Relation of *Buss*, the Court gave Mr. *Tissen* an Order to go to *Somerset-House*, and take *Anthony* into Custody. Page 334.

Langhorn. This last Witness says nothing to me.

L. C. J. *North*. He speaks only to the Plot in general; but Mr. *Otes* speaks to every Article in the Indictment; and *Bedloe* says, He did not only see you transcribe that treasonable Letter, but carry'd other Letters to you, which you promis'd to transcribe; and these are Overt-Acts of Treason.

Langhorn. It is their Testimony only I am concern'd in, and they confess themselves to be Parties to this suppos'd Crime; I desire to know whether they have had their Pardon.

Bedloe. I have three.

Otes. And I have two Pardons under the Broad Seal, but I don't know what is in them.

L. C. J. *North*. They are good Witnesses whether they have their Pardon or not.

Langhorn. They come under the same Reason of Law with an Approver: And if an Approver be pardon'd, the Appellee ought to be discharg'd by Law; and, methinks, these Men having been *participes Criminis*, and having got their Pardons, cannot be reckon'd substantial Witnesses against a Prisoner at the Bar. Besides, I desire to know, if

Mr. Langhorn objects, That an Approver being pardon'd could not be a Witness against the Appellee. The same Reason holds as to an Associate in the Crime.

if they have not receiv'd any Rewards or Gratifications for their Service, or expect any?

Otes. I have disburs'd 6 or 700 *l.* out of my Pocket, and I don't know when I shall see it again.

Page 335. The Court overrules the Objection, and add, That their being maintain'd by the Government is no Objection to their Testimony neither.

L. C. J. *North.* As for their receiving a Maintenance from the King, that is but reasonable, and can be no Objection. And an Approver, while he was in Service, was to have a Penny a Day, which, in those Days, was a better Subsistance; so that any Reward that they have, unless you can prove it to be by Contract, or by Way of Subornation, you cannot make it an Objection.

Langhorn. I am inform'd by a Prisoner, [Mr. *Reading*] *Bedloe* has receiv'd 500 *l.*

Query, If standing in the Pillory disable one from being a Witness, unless it be for Perjury.

L. C. J. *North. Reading* is an infamous Person, he has stood in the Pillory, and can't be a Witness; but for the 500 *l.* we all know of it, it was for a particular Fact, the discovering the Murderers of Sir *E. Godfrey.*

Bedloe. I am so far from gaining by it, that I am 700 *l.* out of Pocket.

Langhorn. Tho' it may be reasonable enough to offer a Reward by Proclamation for the Discovery of a Person charg'd with a Crime when he absconds, yet I think it hard, when a Prisoner is in Custody, Witnesses should be brought in against him by this Means.

Mr. J. *Atkins.* There was a Reward propos'd for the making a farther Discovery of the Plot; and shall this be objected to their Testimony when they come in?

L. C. J. Whatever you object of this Kind does fly in the Face and reflect upon the Integrity and Wisdom of the King, Lords, and Commons, for it was done by the Advice of all three. —— Does your Defence lie wholly in Objections to the Incompetency of the Witnesses?

Langhorn. My whole Defence must be in disabling the Witnesses, for I have been kept close Prisoner in *Newgate* ever since the 17th of *October* till this Day Sev'night, and convers'd with no Friend or Relation; and I never heard what I was

was charg'd with, or could foresee what these Men would testify against me.

L. C. J. If you will prove any Thing, do, but don't spend our Time to no Purpose.

Otes. My Lord, here are Papists come into Court with their Swords on.

Otes tells the Court, the Papists came into Court with their Swords on.

L. C. J. and L. Mayor. They will not draw them here: You are safe enough here, Dr. *Otes.*

Then the Prisoner call'd his Witnesses; and first, Mr. *Hilsley* appear'd.

L. C. J. When did you come over from St. *Omers?* Did Mr. *Otes* come with you.

Hilsley. I came over the 24th of *April*, N. S. but Mr. *Otes* did not come over with me; for neither I, nor any Man in the Ship, saw him.

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Otes. He lost his Money at *Calais*; he lent a great deal of Money to a Gentleman that went away with it.

The Prisoner produces many Witnesses to prove, *Otes* was at St. *Omers* when he pretended to be here at the Consult.

Hilsley. That is very true, but *Otes* was told it by one I met upon the Road.

Mr. *Gifford* appear'd.

He depos'd, That he saw *Otes* at St. *Omers* three or four Days after *Hilsley* went away, and that *Otes* was talking of it; that Mr. *Burnaby* was by, who came to the College the 1st of *May.*

Another Witness appear'd, and depos'd, That Mr. *Burnaby* told them of Mr. *Hilsley*'s being cheated of his Money; but he could not say how, or whether *Burnaby* nam'd the Place.

L. C. J. But Mr. *Otes* names the Place, which he could not have known if he was not there; for this Witness says, *Burnaby* did not say how, by whom, or where it was.

Langhorn. How long was Mr. *Otes* at St. *Omers?*

3d Witness. From *December* till *June*; I saw him almost every Day in the Refectory, except one Day he was at *Watton*; he sate at a little Table by himself, and we could not but take Notice when he was absent.

L. C. J. You have fifteen or sixteen Witnesses will say this.

Langhorn. Otes hath affirm'd, That Sir *Robert Brett* came over with him in *April*, in his Narrative, and upon his Oath before the House of Lords.

Page 337.

Mr. J.

Query, If a Prisoner may not shew, the Witness gave a contrary Evidence in another Court.

Mr. J. *Pemberton*. You cannot oppose him in that Oath unless he hath sworn it here, for it cannot be intended he should have a Witness to make good what he swore there.

Langhorn. I desire my Witnesses may be examin'd as to Sir *John Warner*'s being with him.

L. C. J. I suppose they will say the same they did Yesterday, That he did not stir from his House at *Watton* all *April* and *May*.

4th Witness. My Lord, he liv'd there all that Time, I saw him almost every Day, except the last of *April*, and 1st, 2d, and 3d of *May*, when Sir *John* sent me with some Musical Instruments to St. *Omers*, where I then saw Mr. *Otes* as he was going into the Refectory to Dinner.

L. C. J. You are Sir *John*'s Gardener, are you not? Was Sir *John* there all *June*?

4th Witness. I can't tell that, I speak to *April* and *May*.

L. C. J. Those are the two Months that fit him.

Mr. J. *Pemberton*. How came you not to remember *June* as well as those Months?

4th Witness. Because the 24th of *April* our Rector came to *England*, and Sir *John* took the Charge of the House in the Rector's Absence. And besides, the Question I came for not concerning the other Months, I have not recollected my self as to them, but I believe he was there then too.

Query, If the Ch. Justice does not shew a little Partiality here.

Page 338.

L. C. J. 'Tis true, the Evidence of this Witness, and Mr. *Otes* Testimony, cannot stand together; but it is a Question if this Witness does not come prepar'd; for the Reason he gives you why he does not so well remember the Months of *June* and *July* as those of *April* and *May*, is, because the Question did not fall upon those two former Months; and this shakes all he said before, and looks as if he came on purpose and prepar'd for those Months; and I'm afraid this Objection will go to the Testimony of all your St. *Omers* Men.

L. C. J. *North*. I doubt it will go a great Way to shake all their Testimony.

The

The Prisoner call'd a 5th Witness.

He depos'd, That on the 1st of *May* there was a great Feast kept at St. *Omers*, call'd St. *Fortunatus* and *Gordianus*, and then he saw Mr. *Otes* there, and all the Month of *May* afterwards; and that Mr. *Pool* was there at the same Time, whom Mr. *Otes* had swore came over with him in *April*: And this Witness said, He could be surer of Mr. *Pool*'s being there then, because he was his Musick-Master, and taught him at that Time.

Baillee, a Foreigner, was produc'd, and an Interpreter was call'd.

L. C. J. Where did this Witness see Sir *John Warner* in *April* or *May*?

Interpreter. He says, he saw him at *Watton* from the first *Sunday* in *April* to the 14th of *May*, and convers'd with him; and the 14th of *May*, he remember'd, Sir *John* went to St. *Omers*; for the Deponent says, he was then employ'd about a Building by Sir *John*.

One *Carpentier* was call'd.

He depos'd, That Sir *Thomas Preston*, (whom *Otes* swore came over with him the 24th of *April*) was at *Liege* all the Months of *March*, *April*, *May*, and *June*; that he was absent only during the Vacancies which were from the Beginning of *August* till the End of *September*; and that Sir *Thomas Preston* had not been in *England* these three Years. Page 339.

A *Dutchman* appear'd as a Witness, and an Interpreter was call'd.

Interpreter. He deposes, That Sir *John Warner* was at *Watton* all *April* and *May*, unless one Day in *May*, when he went to St. *Omers*.

John Joseph appear'd.

He depos'd, That Sir *Thomas Preston* was at *Liege* in *March*, *April*, *May*, *June*, and *July*, 1678; and that he was absent only during the Vacancies; for he constantly saw him, during those Months, once in two or three Days.

A 10th Witness appear'd.

He depos'd, That *Otes* was in the College on *Monday* the 25th of *April*, N. S. (being the Day *Otes* swore he came to *England*) for that he went into

into the Infirmary that very Day; and, that *Otes* was at St. *Omers* from *January* to the 20th of *June*, except one Night he lay out at *Watton*.

Mr. *Recorder*. Now he says, it was the 25th of *April*, N. S. Yesterday, he said, it was O. S.

11th Witness appear'd.

He depos'd, He saw Mr. *Pool* at St. *Omers* once in two or three Days all *April* and *May*.

12th Witness.

He depos'd, That he saw Mr. *Otes* at St. *Omers* almost every other Day, from the Time he came thither, which was the Beginning of *December*, till *June* following, when he went away; that particularly he saw him the 1st of *May* in the Garden, playing at Nine-Pins, it being a great Festival, and he remember'd what they play'd for.

13th Witness.

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He depos'd, That he saw Mr. *Otes* at St. *Omers* in *April* and *May*; that *Otes* came thither the Beginning of *December*, and went away the latter End of *June*.

L. C. J. *North*. Yesterday you said, 'twas the latter End of *July*.

14th Witness.

He depos'd, That *Otes* was at St. *Omers* all *April* and *May*, and a good Part of *June*; and that Mr. *Pool* was there in the Infirmary the 3d of *May*, which he remember'd particularly, because it was the Feast of the *Invention of the Holy Cross*, and they had an Action that Day; and some in the Infirmary would have it acted over again before them, and they did so; and he depos'd farther, That two or three Days after Mr. *Hilsley* went away, *Otes* came out of the Infirmary, and the Deponent convers'd with him; that the 2d, 3d, 4th, and 5th of *May* he saw *Otes* in Mr. *Burnaby*'s Company, who came to the College the 1st of *May*; that he saw *Otes* the 26th of *May* with a Band about his Head, in order to be confirm'd; for they have a Linnen Cloth bound about their Heads at the Confirmation.

15th

15th Witness.

He depos'd, That between *December* 77, and *June* 78, Mr. *Otes* was not out one Night, except that when he lay at *Watton* in *January*; that there were not two Days he did not see him, except in *March*, when the Deponent was in the Infirmary, and on the 24th of *April*, when *Otes* was in the Infirmary; that he remember'd *Otes* was in the College when Mr. *Burnaby* came, which was about a Week after Mr. *Hilsley* went away, for they much wonder'd how *Otes* came acquainted with him so soon after his Arrival; that *Otes* was there the 3d of *May*, when Mr. *Killenbeck* and Mr. *Conquest* went away, for they were talking, that *Conquest* was loth to leave the College, because he could get out of his Bed no sooner the Day he was to go away; and he remember'd, *Otes* was there the 26th of *May*, because the Bishop din'd at St. *Omers* that Day, and Mr. *Otes* was confirm'd then.

Langhorn. What do you say as to *Pool* and *Nevil*?

15th Witness. They were there all the Time in Question; and never absent long enough to come to *England*, as he swears.

L. C. J. We must not allow that; tell us what Time they were there, that we may judge of it?

15th Witness. They were there in *March*, *April*, *May*, *June*, and *July*.

Mr. *Recorder.* Was not Mr. *Otes* twice in the Infirmary?

15th Witness. He was there on St. *Thomas* of *Canterbury*'s Day, and he was there in *April*.

Langhorn. I hope your Lordship will take Notice, that he speaks also of the Residence of Mr. *Pool*, Sir *Robert Brett*, and Mr. *Nevil*. Page 341.

L. C. J. Yes, I do.

16th Witness, being a Foreigner, an Interpreter was call'd.

Interpreter. He says, Mr. *Otes* was at St. *Omers* till about the 25th of *June*; and says, that *Nevil* and *Pool* were there all *June*; and that the Deponent, being a Waterman, carry'd *Williams* and *Marsh* away in his Boat the last *Sunday* in *April*.

17th

17th Witneſs.

He depos'd, That Mr. *Otes* was at St. *Omers* in *April* and *May* 78, as were alſo Mr. *Pool*, Mr. *Nevil*, and Mr. *Brett*; that in the Month of *May*, particularly, he made Mr. *Killenbeck* a Suit of Cloaths, and Mr. *Otes* came to the Deponent's Shop, and aſk'd him whoſe they were, and ſome other Queſtions about them.

Mrs. *Grove* appear'd.

Mrs. *Grove*, where *Otes* ſays he lodg'd when he came over to the Conſult, depos'd, ſhe never ſaw his Face till now.

Langhorn. Mr. *Otes* ſays, when he came over to the Conſult, he lay three or four Nights at Mrs. *Grove*'s; I deſire to know whether he did ſo or no?

Mrs. *Grove.* My Houſe was full of Lodgers in *April* was Twelve-Month; and if Mr. *Otes* was there, I muſt needs know him, but I never ſaw him before.

L. C. J. Might not a Man be with any of your Lodgers three or four Nights, and you not know him?

Otes. I had a Bed to my ſelf when I lay there, and it was in a Chamber taken out of another Room, where two Men ſince lay, who were taken there and committed to Priſon.

Mrs. *Grove.* There was one Mr. *Crupper* and a young Man lay with him in that Room then.

L. C. J. Why might not that be Mr. *Otes*?

Sir *Cr. Levins.* You were in a Diſguiſe at that Time, and went by another Name, ſo that the Woman might not know you.

Otes. Yes, I did ſo.

L. C. J. You cannot make any great Matter of this; ſhe might not know him.

Langhorn. Mrs. *Grove* ſays, She knew all her Lodgers that lay there then.

Mrs. *Grove.* Yes, I will name them; one Pair of Stairs there lay Mr. *Strange*, and Mr. *Fitzherbert*, and above, there lay my Siſter, all the Months of *April* and *May*.

L. C. J. What ſay you to the Months of *March*, and *June*, and *July*?

Mrs. *Grove.* I was not to be examin'd but to the two Months I ſpeak of.

Mrs.

Mrs. *Grove*'s Maid appear'd.

She depos'd, That Mr. *Strange* and Mrs. *Fitzherbert* lay in her Mistress's House from *March* till *August*; and that her Mistress's Brother, Mr. *York*, and his Wife, lay there then too. Page 342.

Langhorn. My Lord, I desire to prove a Copy of the Record in the Lords House.

L. C. J. That is not to be given in Evidence here.

Langhorn. It is an Extract out of the Journal of the House of Lords, about those Persons that *Otes* says came over with him from St. *Omers.*

L. C. J. *North.* If you can show a Record to contradict what he hath sworn here, do it; but do you think he can come prepar'd to justify all he hath done in another Place?

Langhorn. He hath said over and over, That Sir *John Warner*, Sir *Thomas Preston*, and Mr. *Pool*, came over with him.

L. C. J. What should you urge that Book for? Can you make any other Proof?

Langhorn. I would have the Persons call'd who took *Ireland*'s Tryal.

L. C. J. If you have any more Witnesses, call them.

Langhorn. Won't your Lordship allow me to prove by Witnesses what he affirm'd in Relation to me at another Tryal? He is not admitted to prove what the Witnesses swore against him at another Tryal.

L. C. J. By no means, you must not meddle with that.

Langhorn. Pray, my Lord, why not?

L. C. J. *North.* That is no Evidence against you, nor can be any Evidence for you.

Langhorn. Then you take away my Defence.

Mr. J. *Atkins.* That is no Evidence in a Civil Cause, and therefore must not be Evidence here.

My Lord *Castlemain* came in.

L. C. J. What do you come for, Sir? What is your Name?

E. *Castlemain.* My Name is *Castlemain*; I came in to give your Lordship an Account, that some of the Witnesses who were summon'd for the Prisoners, are so beaten and abus'd without, that they The Witnesses who appear for the Prisoner, abus'd by the Mob.

dare not come to give their Evidence, for fear of being kill'd.

Court. We will ſeverely puniſh any one who is guilty of it; they ſhall have free Ingreſs and Regreſs, and all the fair Play imaginable.

E. *Caſtlemain.* One of them is ſo beaten, that it may coſt him his Life.

The Priſoner demanded of Mr. *Otes*, How many met at the *White-Horſe* Tavern the 24th of *April* at the Conſult? To which *Otes* anſwer'd, There might be Eighteen or Twenty there at a Time, in ſeveral Rooms.

The Woman that kept the *White-Horſe* was call'd by the Priſoner.

She depos'd, That ſhe never ſaw *Otes* at her Houſe; and that never a Room in her Houſe would hold a Dozen People; and ſhe never had ſo large a Company as Mr. *Otes* mention'd, in all the ſeven Years ſhe kept it, unleſs when a Jury of the Pariſh met, and they were forc'd to be divided into ſeveral Rooms.

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Then ſome of the Standers by were ſworn for the King, and depos'd, That they had ſeen Sixteen or Twenty in a Room there; which the Court ſaid, they thought made the Woman's Evidence of no Weight.

Langhorn. My Lord, *Otes* ſays in his Depoſitions before the Lords, That there met 50 there; and I thought it very conſiderable, if they had never a Room that would hold ſuch a Number as Fifty.

L. C. J. They might meet at ſeveral Times in the Day, ſome at one Time, and ſome at another.

Langhorn. He ſays in *Coleman*'s Tryal, there met fifty, and afterwards adjourn'd into leſſer Colloquies; and this muſt be all in the Morning.

Otes. I ſay, they met there the 24th, but the Conſult was not diſſolv'd till the 26th Day at Night.

L. C. J. Have you any more Witneſſes to call?

Langhorn. I deſire I may call them after the King's Council have done.

Mr. J.

Mr. J. *Pemberton.* You must call no new Witnesses then.

Langhorn. I would ask Mr. *Otes* if *Ireland* was here in *August?*

L. C. J. That was proper enough in the Tryal of the others Yesterday, because he depos'd, That *Fenwick* and *Ireland* were here in *August* together; and this did concern *Fenwick*, but this has no relation to you, and you cannot think it reasonable to examine him to it.

A Witness may not be examin'd to any Thing that does not relate to the Matter in Issue.

Langhorn. Mr. *Otes* has affirm'd, he was 6 or 700 *l.* out of Purse in this Matter; I would examine a couple of Witnesses as to the Probability of this; for he was so very poor and indigent before this Matter happen'd, that it was impossible, without a Purse being made for him, to lay out 6 or 700 *l.*

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L. C. J. If you prove him in an indigent Condition, what is that to the Purpose?

Langhorn. If he were so indigent, is it probable any Man would trust him with such a Sum, unless it were to give this Evidence?

L. C. J. If you have any other Witnesses, call them.

Langhorn. May I not use this Copy of the Record of the House of Lords?

L. C. J. To what Purpose would you have it read?

Langhorn. Bedloe swears there, He had no other Person to accuse either in the House or out of the House, than what he then charg'd, and I was not one of the Persons mention'd.

L. C. J. Can that be used as an Evidence here? If you had Witnesses to prove he made such an Oath, you say something.

The Ch. Justice admits, a Witness may be confronted by another, as to what he said at another Tryal relating to the Prisoner.

Mr. J. *Pemberton.* You pick out collateral Matters, and spend our Time to no Purpose; it may be he did not remember it, and will you conclude him, that he shall never remember it?

L. C. J. *North.* Besides, upon Affidavit or Answer in *Chancery*, it is never allow'd, unless you have the Party to prove he took the Oath.

Langhorn. I would know of Mr. *Otes*, if I distributed any of the Commissions he mentions?

Otes. In *July* or *Auguſt* he ſaid he had diſtributed them, but he did not ſay to whom, except one that he ſent by his Son to the eldeſt Son of the Lord *Arundel* of *Wardour*, to be Commiſſary General.

Langhorn. He hath charg'd me, that I ſent my Lord *Arundel's* Commiſſion by my Son, and that he ſaw a Letter in my Chamber of the Receipt of it.

Otes acknowledges, he conceals Part of his Evidence, tho' ſworn to ſpeak the whole Truth.

Otes. Some of the Evidence that affects the Lords I do not charge upon Mr. *Langhorn*, becauſe I would not diſcover my Evidence againſt the Lords; and hope the Court will excuſe me, becauſe I reſerve it for another Tryal.

Langhorn. In the Narrative of *Coleman's* Tryal, he ſays, He came to me the Day after the Conſult, and communicated it to me, and never ſaw me afterwards.

Mr. *Blaney* was call'd, and aſk'd, Whether *Otes* ſaid any Thing concerning Mr. *Langhorn* at *Coleman's* Tryal?

Blaney. I remember *Otes* did ſay ſomething about Mr. *Langhorn*, but I have not my Book here, and can't tell what it was.

Langhorn. Here is the Narrative.

Blaney. That was not printed by my Copy.

L. C. J. You muſt not bring that for Proof, which is but an Hiſtorical Narrative.

Langhorn. If I can have no Light, how can I tell what they will charge me with?

L. C. J. You know, where a Man is indicted of Treaſon or Felony, he is clapp'd up; and cannot by Law have a Copy of his Indictment. Page 345.

Langhorn. They know ſomething what they are accus'd of, and are brought before a Juſtice of Peace.

Elizabeth Sillyard appear'd.

Langhorn. She comes to prove, That *Bedloe* depos'd at *Reading's* Tryal, that he did not ſay all he could againſt *Whitebread* and *Fenwick* at their firſt Tryal; which ſhews him to be guilty of Perjury, for he was ſworn *to ſpeak the Truth, the whole Truth, and nothing but the Truth.*

L. C. J.

L. C. J. Is this material in your Case what he said in *Whitebread* and *Fenwick*'s? Besides, they were told, he was in Treaty with *Reading* about lessening his Evidence against the Lords, who were to judge of the Measure they should have from him by his Kindness to *Whitebread* and *Fenwick*, and therefore he conceal'd something.

Bedloe takes the Liberty of concealing Part of his Evidence too.

Langhorn. This is so far material, to discredit his Testimony.

But *Sillyard*, the Witness, desiring Protection from the Rabble, which the Court would not give, otherwise than by saying, They would punish those that meddled with her, Mr. *Langhorn* waiv'd the Matter.

L. C. J. If you have no more, the King's Council will go on.

Then the King's Council call'd Witnesses to prove Mr. *Otes* in *London* about the Time of the Consult; and, first, Mr. *Walker* the Clergyman was sworn.

The King's Council call Witnesses to prove *Otes* in *London* at the Consult.

Mr. *Walker* depos'd, That in *March* or *April* 78, (he believ'd it was about the Middle of *April*) he met Mr. *Otes* in a Disguise between St. *Martin's-Lane* and *Leicester-House*, about Ten in the Morning, but could not recollect who it was till the next Morning, and then he went to a certain Gentlewoman's to ask after him; and she said, *Otes* was an undone Man, he was gone over to the Church of *Rome*, and he was lurking about Town, and dar'd not appear only of Evenings.

Mr. J. *Dolben*. Did you mention this first to Mr. *Otes*; or did Mr. *Otes* come and put you in Mind of it?

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Mr. *Walker*. I discours'd with some Persons about it soon after the Plot was discover'd, and so, I suppose, it came by Accident to him.

Mrs. *Ives* was sworn.

She depos'd, That in *April* was Twelve-Month, Mr. *Walker* came to her, and ask'd her after Mr. *Otes*; and she told him, She had not seen him since he went beyond Sea; but his Friends told her, he was about the Town in a Disguise; and Mr. *Walker* answer'd, He saw him the Day before much alter'd from what he was, in light-colour'd

Cloaths; and ſhe remember'd it to be in *April*, becauſe Mr. *Otes*'s Father was at her Houſe about that Time, and ſhe told him what Mr. *Walker* ſaid.

Butler, Sir *Richard Barker*'s Coachman, was ſworn.

He depos'd, That in *May* was Twelve-Month, *Otes* came to his Maſter's Houſe in a Diſguiſe, and enquir'd for Dr. *Tongue*; that the Deponent was then in the Gate-Houſe; and *Otes* went into the Houſe and ſoon return'd, and the Deponent thought he was affronted, becauſe ſomebody laugh'd at his Habit, for he was more like a Shepherd than a Miniſter, having his Hair cut, a grey Coat, and plain Shoes, and a flapping Hat; and that he went back thro' the Gate, and took no Notice of the Deponent, tho' he ſpoke to him, and welcom'd him to *England*; and that he acquainted his Maſter of *Otes*'s being there in ſuch a Habit, when he came Home about a Week after.

Cicely Mayo was ſworn.

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She depos'd, That about a Fortnight before *Whitſontide* was Twelve-Month, Mr. *Otes* came to Sir *Richard Barker*'s; that ſhe had never ſeen him before, but a young Man who liv'd at Sir *Richard*'s pointed at him, and ſaid, Surely he was turn'd Quaker or Jeſuit by his Habit; and ſhe reply'd, He was no Quaker, for he had a Peruke on; and ſhe depos'd, That ſhe was ſure it was the ſame Man that ſtood by her in Court.

Philip Page was ſworn.

He depos'd, That he had known Mr. *Otes* theſe five Years; and that he ſaw him the Beginning of *May* was Twelve-Month at Sir *Richard Barker*'s.

Sir *Richard Barker* was ſworn.

Sir *Richard* depos'd, That he had known Mr. *Otes* many Years, but he was out of Town, and did not ſee him at the Time his Servants mention'd; tho' when he came to Town, which was the latter End of *Whitſon*-Week, his Servants told him, *Otes* had been there in a Diſguiſe, and enquir'd for him and Dr. *Tongue*, but left no Meſſage.

Mr. *Clay*, the Prieſt, was ſworn.

He depos'd, That he met Mr. *Otes* at *Arundel-Houſe*, at Mr. *Charles Howard*'s, twice, once in *April*,

pril, and another Time in the Beginning of *May* was Twelve-Month; that he convers'd with him; and Mr. *Charles Howard* told the Deponent, *Otes* had some Thoughts of being a Jesuit, but he had diverted him from it. Page 348.

Langhorn. Did Mr. *Otes* put any Questions to Mr. *Howard*'s Son about learning his Book.

Clay. Not that I heard; I do not remember that Mr. *Howard*'s Son was there.

Mr. *Smith* was sworn.

He depos'd, That he knew *Otes* very well; that he was formerly a Scholar in the School where the Deponent was Usher; and that the first *Monday* in *May* was Twelve-Month *Otes* din'd with the Deponent at his House at *Islington*, and staid with him three or four Hours; and that he talk'd of his Travels in *Spain*; and that *Otes* had then a Cinnamon-colour'd Coat on trimm'd with green Ribands; and that the Deponent's Wife din'd with them at the same Time.

L. C. J. Why did you not bring her to testify this?

Otes. He cannot find his Wife.

Langhorn. Pray call Mr. *Charles Howard* and his Wife.

L. C. J. I believe he don't think it safe to come here; we know upon what Account.

Mr. *Charles Howard* appear'd.

Langhorn. It is affirm'd by Mr. *Clay*, that *Otes* was at your House in *April* and *May* was Twelve-Month. The Prisoner calls other Witnesses to contradict them.

Mr. *Howard.* He was there about two Years ago, and after *July* last Year he was there; but I don't remember he was there in *May*.

Langhorn. When did your Son die?

Mr. *Howard.* The 5th of *May* 1677; Mr. *Otes* was at my Lodging in *April* 77, and then my Child was alive and din'd with him and Mr. *Clay*; but Mr. *Otes* has not been there with Mr. *Clay* since. Page 349.

Clay. I did not know Mr. *Otes* till the latter End of *April* last Year.

L. C. J. Do you remember whether Mr. *Howard*'s Son was alive.

Clay. He had a Son alive at that Time.

Otes. He had one Son, indeed, dy'd a Year before Mr. *Clay* and I met there.

Mr. *Howard.* But I ſpeak of my eldeſt Son, who dy'd two Years ago.

L. C. J. It's plain here is a Miſtake, he ſpeaks of a Son that was then and is now alive, and you of your eldeſt Son. —— Well, Mr. *Langhorn*, will you ſay any Thing?

Mr. *Langhorn's* Obſervations on the Evidence.

Then Mr. *Langhorn* made ſome Obſervations on the Evidence: He inſiſted, That if he had prov'd *Otes* to have falſify'd in any Part of his Teſtimony, he ought not to be believ'd in the reſt; that he thought he had done this to Satisfaction in the Inſtances of Sir *Thomas Preſton*'s, Sir *John Warner*'s, and Mr. *Pool*'s being on the other Side the Water when *Otes* ſwore they were here; as alſo in proving *Otes* to be at St. *Omers* when he had ſworn he was on this Side; and, for his own Part, he ſolemnly proteſted, he had never ſeen *Otes* ſince *November* 1677, when he brought him Letters out of *Spain* from his Sons: That he had had but one Week to provide for his Defence, and was forc'd to take ſuch Information as his Friends could pick up, to anſwer what he found in *Otes*'s Narrative, ſuppoſing he would have ſaid the ſame here; that the Lads who came from St. *Omers*, could not be ſuppos'd to come over with any Deſign, or to be brib'd by a Reward to ſay what they did; for he never ſaw the Face of any of them till now.

L. C. J. *North.* They are all Papiſts, and ſpeak in a Common Cauſe.

Mr. *Langhorn* ſaid, If they were not to be believ'd becauſe they were Papiſts and Friends, neither were the others to be believ'd becauſe they were Enemies. —— That as to *Bedloe*'s Evidence, it was not probable, in his Way of Practice, he ſhould become a Clerk to regiſter Letrers, and keep the Accompts of a Religious Order; and ſtill more improbable, that he ſhould admit *Bedloe* to be privy to thoſe Accompts, being one that he could not tell whether he had ever ſeen him before, and if he could have

gueſs'd

gues'd what he would have charg'd him with, he might have been better prepar'd for his Defence; that he made Use of such Witnesses as his Friends thought might be useful to him, and that he never saw any of them till they came into Court, while the other Side had had Time to get theirs together; that he hop'd he should lie under no Disadvantage on Account of his Religion, for that would look as if they condemn'd him merely for that; and he disclaim'd all Principles of Disloyalty, and said, He believ'd it was Damnation to any one that went about to kill the King, or deprive him of his Government; and concluded, recommending his Cause to his Lordship and the Jury.

Then the Lord Chief Justice directed the Jury: He said, Altho' Mr. *Langhorn* would have it taken for granted, that his Witnesses spoke impartially, because they were Strangers to him, yet he observ'd, they were no Strangers to the Cause they came about; that they came over to defend all the Roman Catholicks they were about to hang for the Plot, and that they were sent over for that Purpose, and their speaking to no other Months but *April* and *May* would encline Men to believe it. And besides he said, The Lawfulness of deposing and killing of Kings of a different Religion, was a Doctrine they avow'd in Print; and that they taught and practis'd all Sorts of Lying and Equivocation to be lawful to propagate their Faith; and it was not unlikely that these young Boys, bred up in their Colleges, had these Principles instill'd into them; that their Dispensations, Pardons, and Indulgencies for Breach of Vows, Oaths, and Sacraments, were still worse, and render'd them unfit for human Society, or to have any Faith or Credit given to their Testimony, altho' it might be fair to hear what they said. And that there was not only this in it, but Mr. *Otes* had justify'd his being here by seven or eight Witnesses, who expresly contradicted the others Testimony: And tho' he confess'd, there were some Witnesses who spoke to Sir *Thomas Preston* and Sir *John Warner*'s being

Page 350 The Ch Justice's Directions to the Jury.

That Papists were not to be believ'd in their Common Cause.

Charges them with most pernicious Principles, and inveighs against them.

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on

on the other Side, who were not contradicted by any Witneſſes, yet, if the reſt were not to be believ'd as to *Otes*'s being there, neither were theſe as to the others : And he added, that as there ſtood a Gentleman at the Bar for his Life on the one Hand, ſo, if Mr. *Otes* ſaid true, all their Lives, Liberties, King, and Religion, were at Stake on the other ; that they knew the cruel Principles of the Papiſts by Experience, and could not be blam'd for taking Care of themſelves. That the Plot was prov'd as clear as the Day by *Otes*, and his Teſtimony was confirm'd by that which could never be anſwer'd, *viz.* The Letter found among *Harcourt*'s Papers, who was one of the Conſpirators, giving an Account, that the Conſult was to be on the 24th of *April*, as Mr. *Otes* had before depos'd.

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He frights the Jury with diſmal Apprehenſions of the Plot.

Speaks of a Letter that was found, which, he ſaid, was an undeniable Evidence of the Plot.

This Letter not having been given in Evidence at this Tryal, my L. C. J. *North* deſir'd it might be read now, and accordingly it was read, being the ſame that was produc'd at the Tryal of the five Jeſuits.

Then the Lord Chief Juſtice proceeded in his Directions to the Jury, and told them, That this Letter was produc'd as a Proof of the Plot in general, and was not to be apply'd to Mr. *Langhorn* in particular.

The Priſoner ſhows, that was no Evidence at all of it.

Langhorn. Otes might eaſily know of this Congregation before the Letter was taken, being at St. *Omers*, where the like Letters of Summons might come over, to fetch ſome over from thence.

L. C. J. 'Tis true, he might know of the Conſult; but pray, can you tell me the Meaning of thoſe Words in the Letter, *That they ſhould not come too ſoon to* London, *nor appear too much about Town, for fear of diſcovering the Deſign, which they knew requir'd Secrecy in its Nature.*

Langhorn. This *Deſign* was the holding of a Congregation; and it was like the Meeting of a Dean and Chapter in a College ; and he bids them not come before the Time, they being certainly in great Danger to be taken, for the Parliament was then ſitting.

L. C. J.

L.C.J. But you know there was great Indulgence used towards the Papists at that Time; and was this extraordinary Caution used only for Mr. *Whitebread* and his Fellows to make an Officer?

Langhorn. Surely, their holding a Congregation here requir'd Secrecy.

Then the Chief Justice went on, and told the Jury, That indeed this was not any Evidence against Mr. *Langhorn* in particular, but of the Plot in general; but there was one Thing which affected the Prisoner which he had forgot to mention, *viz.* His Expressions when *Otes* and he were talking of Sir *George Wakeman*'s insisting on 15000 *l.* for poysoning the King, *That it was a base covetous Thing in Sir* George, *and it being a publick Cause, it would have been no Matter if he had done it for nothing*; and so he left it to the Jury. Page 353.

The Chief Justice said, The Term beginning the next Day, their Commission determin'd that Night, and therefore Sir *George Wakeman*, and the other Prisoners, would not be try'd till the next Sessions. Then the Judges went off the Bench, leaving the Recorder, *&c.* to take the Verdict; and the Jury withdrew. *Query*, Sir *George Jefferies* Recorder

After a short Recess, the Jury return'd, and brought the Prisoner in *Guilty*. Mr. *Recorder* said, It was a Verdict according to the Justice of the Evidence. The Prisoner convicted, and the Recorder commends the Verdict.

Then Mr. *Whitebread* and the other Jesuits that were try'd the Day before were set to the Bar, and it was demanded of them and Mr. *Langhorn* respectively, What they could say why Judgment of Death should not pass upon them according to Law? And none of them offering any Thing in Arrest of Judgment, Mr. Recorder made a Speech upon the Occasion, shewing the greatness of the Prisoners Crimes in particular, and the bloody Principles on which their Religion was founded in general. He said, he was very much concern'd for Mr. *Langhorn*, who was arriv'd to great Eminence in his Profession, but that he too had not only trespass'd against all the Rules of Christianity, but against the Rules of his Profession, and could not be ignorant what an Offence it was The five Jesuits are brought to the Bar again, and Mr. Recorder makes a Speech. Page 354.

to

to attempt any Injury againſt the Perſon of the King, or to endeavour to introduce a foreign Power. He ſaid their Crimes had been fully prov'd, and that no Perſon there cou'd be in any doubt of their Guilt: And that there was not the leaſt Room to doubt of the Credibility of the Witneſſes, who had been examin'd againſt them: And that they had been fully heard, and ſtood fairly convicted of the Crimes they had been indicted for. Then he offer'd them the Aſſiſtance of any Proteſtant Divines, inveigh'd again againſt their Principles, bid them conſider the Tribunal whither they were going, and concluded with ſome pious Exhortations. And afterwards pronounc'd the Sentence as uſual in Caſes of High Treaſon.

He pronounces Sentence on Mr. *Langhorn* and the five Jeſuits.

Then the Priſoners deſir'd their Friends might come to them in Priſon, which was granted.

And the Court adjourn'd for *London* to *Guild-Hall*, the 14th of *July*: And for *London* and *Middleſex* to the *Old Baily*, the 16th of *July* following.

The TRYAL *of Sir* GEORGE WAKEMAN, *Bart.* WILLIAM MARSHAL, WILLIAM RUMLEY, *and* JAMES CORKER, *Benedictine Monks, for High Treaſon, the* 18*th of* July, 31 Car. 2. 1679.

The Indictment againſt the three firſt for High Treaſon, in compaſſing the King's Death.

THE Indictment againſt Sir *George Wakeman*, *Marſhall*, and *Rumley*, ſets forth, That the ſaid three Priſoners, the 30th of *Auguſt*, in the 30th Year of the King, at the Pariſh of St. *Giles*'s in the Fields, in the County of *Middleſex*, did traitorouſly compaſs, imagine, and intend Sedition and Rebellion within this Kingdom, to move and procure to depoſe the King and put him to Death, and to alter and ſubvert the Government and Religion eſtabliſh'd; and to levy War againſt the King; and that, in Order to accompliſh their aforeſaid Treaſons, they, with other falſe Traitors,

tors, did on the aforeſaid 30th of *Auguſt* traitorouſly aſſemble, and conſult, and agree, to put the King to Death, and alter the Religion eſtabliſh'd to the Romiſh Superſtition, *&c.* and that the ſaid Sir *George Wakeman*, in Order to induce the ſaid *Marſhal* and *Rumley* to perform their ſaid traitorous Agreements, did then and there promiſe to aid and aſſiſt them in ſubverting and altering the Religion and Government eſtabliſh'd, and did alſo traitorouſly undertake to murder the King: And that on the ſame 30th of *Auguſt* the ſaid Sir *George Wakeman* receiv'd and had of a Perſon unknown, pretending to be Provincial of the Jeſuits, and to have Authority to grant Commiſſions from the See of *Rome*, a Commiſſion to inſtitute and authorize him to be Phyſician-General of the Army, intended to be rais'd againſt the King. That he read the ſaid Commiſſion, conſented to it, and kept it in his Poſſeſſion, intending to execute the ſaid Employment: And that the ſaid *William Marſhal* and *William Rumley*, and other falſe Traitors unknown, did on the ſaid 30th of *Auguſt* agree to pay the Sum of 6000 *l.* towards the affecting and conſummating the aforeſaid traitorous Agreements: And that all this was contrary to the Duty of their Allegiance, the King's Power, *&c.*

1. Overt Act, a Conſult.

2. Sir *Geo.* undertakes to murder the King.

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3. Receives a Commiſſion from *Rome.*

4. *Marſhal* and *Rumley &c.* agree to pay 6000 *l.* towards carrying on the ſaid Treaſons.

To which Indictment the ſaid Sir *George Wakeman*, *Marſhal*, and *Rumley*, pleaded not guilty.

The Indictment againſt *James Corker* ſet forth, That the ſaid *James Corker*, together with the five Jeſuits, *White*, *Fenwick*, *Harcourt*, *Gavan*, *Turner*, and other falſe Traitors, did traitorouſly compaſs and intend the Death of the King, the Subverſion of the Government, and Alteration of Religion, *&c.* And that on the 24th of *April*, in the 30th Year of the King, they did, at the Pariſh of St. *Giles*'s in the County of *Middleſex*, aſſemble, conſult, and agree, to put their ſaid traitorous Deſigns in Execution: And particularly did agree, that *Thomas Pickering* and *John Grove* ſhould kill the King, and that the ſaid *James Corker*, together with the ſaid other Traitors, ſhou'd therefore ſay a certain Number of Maſſes for

The Indictment againſt *Corker* for High Treaſon, in compaſſing the Death of the King.

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1. Overt Act, conſulting and agreeing that *Pickering* and *Grove* ſhou'd kill the King, *&c.*

for the Soul of the ſaid *Thomas Pickering*, and ſhou'd pay to the ſaid *John Grove* a certain Sum of Money agreed on for the ſaid Service: And that the ſaid *James Corker*, and the ſaid other Traitors, did each to other engage themſelves,

2. Taking the Sacrament to conceal the Conſpiracy.

and promiſe, and ſwear upon the Sacrament to conceal the ſaid Treaſons: And alſo that the ſaid *James Corker*, together with the ſaid other falſe Traitors, did on the Day and Place aforeſaid,

3. Inciting others to kill the King.

perſwade, abett, and counſel four other of the King's Subjects, to the Jurors unknown, to murder the King; all which was againſt the Duty of his Allegiance, the King's Peace, *&c.*

To which Indictment the ſaid *James Corker*

They are all try'd by the ſame Jury.

pleaded not guilty; and the Jurors were call'd, to whom the Priſoners making no Challenges, a Jury was ſworn, and *Edward Ward*, Eſq; of the Council for the King, open'd both the Indictments.

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Sir *Robert Sawyer* open'd the Nature and Courſe of the Evidence, and has theſe Expreſſions: That the Priſoners ſtood indicted as principal Actors in the late *Moſt Catholick and Bloody Plot.* That the Church and State ſeem'd to them too little a Sacrifice to be offer'd up to the univerſal Supremacy of *Rome*, but the King was alſo determin'd to be cut off, and ſeveral Methods had been reſolv'd upon; ſome had contriv'd to ſhoot him, and theſe had been brought to condign Puniſhment; others were to ſtab him, and theſe had been brought to Juſtice too; and a third Sort, who were now to be try'd, were for taking him off by Poiſon; and this Gentleman, Sir *George Wakeman*, whoſe Experience and Dependance on the Court gave him great Opportunities, was pitch'd on as the propereſt Inſtrument to effect it: And that tho' his Perſwaſion might be ſome Inducement to him to commit it, he muſt be hir'd with a Reward of 15000*l.* to undertake the great Employment, of which he receiv'd Part in Hand.

That the other Criminals were privy to the great Conſult for murdering the King, and tho' the Jeſuits were the great Engineers, yet all the

other

other Orders were to contribute, and particularly the Benedictine Monks were to furniſh 6000 *l.*

That they ſhou'd prove this Deſign of poiſoning from ſeveral Diſcourſes *Ireland* (who had ſuffer'd) had about it in *Auguſt*, at *London*, altho' *Ireland* had, at his Death, deny'd his being in *London* in *Auguſt* with the greateſt Aſſeverations. And from hence, he ſaid, they might collect what Credit was to be given to the Words of ſuch dying Men: And that thoſe who liv'd in the Sin of committing ſuch horrid Crimes wou'd not ſtick to propagate and protect that Church they were Members off, by denying the plaineſt Truths at their Deaths.

N. B. When *Otes* was convicted of Perjury, it appear'd, *Ireland* was not at *London* at that Time in *Auguſt*, that *Otes* depos'd he was, and his dying Speech prov'd true.

Then the King's Council call'd their Witneſſes, and firſt Mr. *Dugdale*. Page 359.

Mr. *Ward*. Pray ſpeak what you know of the Plot in general.

The King's Witneſſes call'd to prove the Plot in general.

Dugdale depos'd, That for ſeven Years paſt he had known ſomething of the Plot, and that about two Years ſince, the Deſign of killing the King and the Duke of *Monmouth*, and introducing of their Religion, was more particularly communicated to him by *Ewers*, *Gavan*, *Peters*, and *Lewſon*, their Prieſts: That all the Letters which came from *London* into *Staffordſhire*, from Mr. *Harcourt*, or others, concerning the Plot, were directed to him; that he had ſometimes eight or nine in a Packet; that he open'd ſeveral of them, and ſome that he cou'd not ſeal up again he kept; that he was to deliver them to Mr. *Ewers*, (who never knew that he open'd them) and he was to diſtribute them to the ſeveral People in the Country for whom they were deſign'd; that the Purport of them was for the raiſing of Money, and engaging the Gentlemen of the Country in the Plot, and particularly Mr. *Gerrard* of *Hilderſome*, Mr. *Howard* of *Horecroſs*, and Sir *James Simons*, were to be Officers in the Army, when the King was kill'd —— That there was Money ready in *July* laſt for raiſing the Army, the Deponent having ſeen Acquittances that came from St. *Omers* that the Money was paid;

paid, and that there was a Caution given, in a Letter directed to him, not to permit any Rumour of taking Arms 'till the King was diſpatch'd: The Deponent cou'd not remember who writ that Letter, but ſaid it came from Mr. *Harcourt* in *Grove*'s Packet, and he ſuppos'd it came from beyond Sea to *London*, but cou'd not tell from where it was dated; that of the Letters ſet down, ſome came from St. *Omers*, ſome from *Paris*, and others from *Rome*: That there was a conſtant Correſpondence between *Ewers*, *Gavan*, and *Vavaſor* in *Staffordſhire*, and *Ireland*, *Harcourt*, *Fenwick*, and *Grove* in *London*, and that theſe laſt uſually wrote from *London* three Times a Week about the Plot. That in a Letter from Mr. *Whitebread* to Mr. *Ewer* it was writ plainly in theſe or the like Words, *That he ſhould chooſe none but ſuch as were ſtout and hardy to kill the King*. That this Letter came by the common Poſt, directed to the Deponent, with only the two firſt Letters of the Writers Name ſubſcrib'd, and they contriv'd it thus, that if any of their Letters were intercepted, the Deponent only wou'd have been in Danger, and that he had been at leaſt ten Times ſworn to Secreſy upon the Sacrament by them.

That, beſides what he diſcover'd by theſe Letters, he had talk'd with ſeveral of them about the Plot, and particularly *Gavan*, *Ewers*, and *Lewſon*; and my Lord *Stafford* perſwaded him in *June* or *July* laſt to be an Actor in the King's Murder, which they ſaid might eaſily be effected by ſhooting or ſtabbing; and that he was to have come to *London* in *October* following, and been under the Direction of Mr. *Ireland*, but he never came, the Plot being diſcover'd firſt: That my Lord *Stafford* ſaid he ſhou'd have 500 *l.* for a Reward at preſent, and a better Reward when it was effected.

Sir *E. Godfrey's* Death.

That there was a Letter came directed to Mr. *Ewers* the *Monday* after Sir *E. Godfrey* was kill'd, dated the *Saturday* before, which ſaid, *This very Night Sir* E. Godfrey *is diſpatch'd.* And that Mr. *Ewers* ſhew'd it him as an Encouragement; but the

the Deponent told him he would be hang'd if it did not overthrow the Plot; and *Ewers* reply'd, he was a Man that uſed to puniſh debauch'd Perſons, and it wou'd be laid upon them. And that the Deponent told the Parſon of the Town, and a Relation of my Lord *Aſton*'s, on the *Tueſday*, of a Juſtice of Peace in *Weſtminſter* being kill'd.

L. C. J. Why did they look on Sir *E. Godfrey* as ſuch an Enemy to them? Sir *Will. Scroggs.*

Dugdale. They had intruſted him before, but he began to be ſtrict with Dr. *Otes*, ſearching into all the Concern, as Mr. *Ewers* told me, and ſo they thought good to take him off.

Sir *Robert Sawyer.* Did you hear any Thing of a Maſſacre intended? Page 361.

Dugdale. All Proteſtants were intended to be cut off.

Mr. *J. Atkins.* What induc'd them to put ſuch Confidence in you? Had you ſo much Zeal for their Religion?

Dugdale. Yes, inſomuch that I was taken for a Prieſt in the Country, and I gave them 400 *l.* towards this Deſign, and to pray for my Soul; and I promis'd them another 100 *l.* when they complain'd they ſhou'd want Money: And Mr. *Gavan* promis'd me I ſhou'd be canoniz'd for a Saint.

Corker. He ſays a Letter came from *London*, thro' Mr. *Harcourt*'s Hands, concerning killing the King: I would know from whom that Letter came?

Dugdale. One came from *Paris* to St. *Omers*, and ſo from St. *Omers* to *London*, and from thence, by a ſpecial Meſſenger, to *Tixhall* in *Staffordſhire*; and Mr. *Ewers* and my Lord *Aſton* read it in the Parlour in my Sight: There was *J. W.* writ to it, and I ſuppoſe it was from Sir *John Warner*.

L. C. J. Where was it dated? Whence did it come?

Dugdale. There was one which was firſt began at *Paris*, where Advice was firſt to be had, and Aſſiſtance was promiſs'd, how it ſhould be carry'd on; and they thought it beſt, after they

had kill'd the King, for the Papiſts to lay it on the Preſbyterians, and then the Church of *England* wou'd join with the Papiſts to cut them off. And the Letters from *London* ſaid they thought it good Advice, and ſeveral Lords ſet their Hands to it, particularly my Lord *Stafford*, Lord *Bellaſis*, and Lord *Arundel*; and in that very Letter there was an Army mention'd that were to be ready to cut off thoſe that ſhou'd e'cape having their Throats cut.

L. C. J. To what Purpoſe did the Lords ſet their Hands?

Dugdale. That they approv'd it as good Advice.

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Corker. Was the Letter dated from St. *Omers*?

Dugdale. There were three Letters came in that Packet, one from St. *Omers*, another from *Paris*, and another from *London*, in one Cover.

L. C. J. He ſuppoſes there was a Letter writ firſt at *Paris*, and then ſent to St. *Omers*; and that there was a Letter writ by Sir *John Warner*, and ſent to *London*, and perus'd in *England* by the Lords; and all ſent in one Cover into *Staffordſhire*.

Corker. Your Lordſhip makes Senſe of it, but he makes nothing but Contradictions: Pray when was he to have kill'd the King?

Dugdale. I was to have come up in *October* and done it.

Corker. *Otes* tells us of three Ways of killing the King, but this is a Fourth, never thought on before: And what ſhou'd there be a Deſign of killing the King in *October* for, when it was to have been done in *July* or *Auguſt* before?

L. C. J. Dr. *Otes* told you as much as he knew, but he did not pretend to give an Account of all Plots; and this Deſign in *October* might be deſign'd to be put in Execution only in Caſe the other fail'd.

Marſhal. Among other Things that render this Teſtimony ſuſpected, there is one which is taken from the common Practice of all Men in like Caſes, who, where there is Danger, and Matters are of Moment, uſe to be very careful and circum-

circumspect, and make Choice of as few Instruments as possible. But here is one Person after another employ'd, Letter after Letter, a hundred Men, nay, almost the whole Nation acquainted with it, where a few might serve the Turn.

L. C. J. *North.* You are not to make your Objections now, you must reserve that to the last, when the King's Evidence is done, but you may ask the Witnesses Questions. Page 353.

Then the Prisoners desir'd Pen, Ink, and Paper, and it was given them.

L. C. J. Had the Letters within the Cover no particular Directions?

Dugdale. Every Letter was directed to me, and I deliver'd them to Mr. *Ewers* to distribute; they were all mark'd with a black Cross, and Mr. *Ewers* carry'd them about to the several Persons they were design'd for; he knew who they were for by conversing with them.

Rumley. How many Letters came from beyond Sea, and from what Persons?

Dugdale. I believe there came 100 in two Years Time, and there were very often some from Sir *John Warner.*

L. C. J. Did you ever see any Commissions for raising Forces?

Dugdale. No, I did not.

Corker. He says he gave 400*l.* for promoting this Design, and says, with the same Breath, he was to receive 500*l.* this is to do and undo.

Dugdale. It was my Lord *Stafford* that promis'd me the Money, and I enquir'd of Mr. *Ewers* what it meant, having given my Money before; but I suppose my Lord *Stafford* knew nothing of that. Page 364.

Mr. *Prance* appear'd.

He depos'd, That being at Mr. *Ireland*'s Chamber in *Russel Street*, where was also *Fenwick* and *Grove*, he heard them discourse of 50000 Men to be rais'd for settling the Protestant Religion: And the Deponent demanded what poor Tradesmen must do then? *Fenwick* answer'd, he need not fear Church-Work enough for making Crucifixes, *&c.* And they said the Lords *Bellasis*, *Powis*, and *Petre*, were to command the Army; and that

one *Paſton*, a Council, who was a Catholick, told the Deponent, That the Lords had given out Commiſſions to Sir *Henry Bennyfield*, Mr. *Stone*, Mr. *Talbot*, and others, for raiſing an Army: And that my Lord *Arundel*'s Butler told the Deponent, that one *Meſſenger* was to kill the King, but that the Deponent afterwards met *Meſſenger*, and *Meſſenger* ſaid he was off of it.

Mr. *Fenniſon* having been ſworn, appear'd.

He depos'd, That he was at Mr. *Ireland*'s Chamber in *Ruſſel Street* in *June* 78, and diſcourſing about Religion, Mr. *Ireland* ſaid, the Romiſh Religion ſhould be publickly own'd again in *England*; and that there was but one in the Way that hinder'd it from flouriſhing here, and it was an eaſy Matter to poyſon the King; and that Mrs. *Anne Ireland* being by, rebuk'd her Brother, and aſk'd him why he talk'd ſo; and then Mr. *Ireland* anſwer'd, with ſome *Salvo*, he did not think it ought to be done: That the Deponent ſaying, It was a Scandal to Religion to propagate it by ſuch Means, and that the Gun Powder Treaſon had done the Cauſe no Service, Mr. *Ireland* anſwer'd, That was but a State Trick, and an Invention of my Lord *Cecil*'s.

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The Papiſts Opinion of the Powder Plot.

Mr. *Ward*. Were you with Mr. *Ireland* at any Time afterwards?

Fenniſon. I was with him the 19th of *Auguſt*, at his Chamber in *Ruſſel Street*, and he was pulling off his Boots, being juſt come Poſt out of *Staffordſhire*: I remember very well it was upon a *Monday*, the 19th of *Auguſt*, for I had been at *Windſor* the *Saturday* before, to take my Leave of Mr. *Boxes* before I went my Journey into the North, (and on the 14th of the ſame Month I came from *Tunbridge*:) Mr. *Ireland* aſking me how the Court diverted themſelves at *Windſor*, I told him his Majeſty went out early in a Morning a Fiſhing, and had but little Company with him: And *Ireland* reply'd, he wonder'd the King ſhou'd go ſo thinly guarded, and that he were eaſily taken off; I ſaid, God forbid; and he then qualify'd it with ſome Expreſſions, ſo that

This is contradicted at *Otes*'s Tryal by forty Witneſſes.

I

I took no Notice of them, but diſcourſing of it after the Plot broke out to my Father, I ſaid, Pray God there be nothing in this Plot; reflecting upon the Diſcourſe that had happen'd between Mr. *Ireland* and me.

Sir *Robert Sawyer*. When did you go from *London* into the North?

Jenniſon. I went the 4th of *September*, as the Coach-Book will make appear.

L. C. J. Sir *John Southcott* and his Lady, and many more, have ſworn *Ireland* was with them in their Journey to *Staffordſhire*, and at *Tixhall*, from the 3d of *Auguſt* to the 16th. And then Witneſſes appear'd that ſaw him in *Cheſhire*: And there was other Witneſſes that ſwore he did not come to Town till the 13th of *September*. Now this Gentleman ſays, he went his Journey into the North the 4th of *September*, and therefore it muſt be before the 13th he ſaw Mr. *Ireland*. Page 366.

Corker. Did you make this Diſcovery before the pretended Plot came out? When did you leave your Religion?

Jenniſon. About three Months ago.

Corker. This Man did not leave his Religion, or make this Diſcovery, till it appear'd advantagious to him.

L. C. J. They ſay his Father is a Gentleman of 1000 *l. per Annum*, and this is his eldeſt Son.

Mr. *Recorder*, There is an elder Brother, my Lord, but he is a Prieſt.

Jenniſon. I don't know that of my own Knowledge, but he is in *Newgate* about it.

Corker. He does not know it, and therefore he is not Heir; and the Advantage of his Eſtate is not ſuch but he may lay hold of a Reward for this Diſcovery.

Mr. *Bowes* was ſworn.

He depos'd, That he ſaw Mr. *Jenniſon* the Beginning or the Middle of *Auguſt* at *Tunbridge*, and that he came from thence to *London*, but that the Deponent was gone out when Mr. *Jenniſon* came to take his Leave of him at *Windſor*.

Mr. *Burnet* was ſworn.

He depos'd, He met Mr. *Fenniſon* going to *Windſor* about the Middle of *Auguſt*.

L. C. J. This does not ſo much relate to the Priſoners, but is to ſatisfy the World that what Mr. *Ireland* aſſerted at his Death, and what has been ſworn by ſo many Witneſſes that Mr. *Ireland* was out of Town in *Auguſt*, is not true.

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Then Mr. *Otes*, having been ſworn, appear'd.

Mr. *Ward*. Pray, Sir, will you tell your Knowledge of this Matter.

Otes depoſes that the Queen was to aſſiſt Sir *George Wakeman* to poiſon the King.

Otes. In *July* Mr. *Aſhby* came to Town ſick, and Sir *George Wakeman* wrote him ſome Inſtructions how he ſhould order himſelf at the *Bath*: And in this Letter Sir *George* did write that the Queen wou'd aſſiſt him to poiſon the King: Two or three Days after I ſaw Sir *George Wakeman* and Mr. *Aſhby* together, and Sir *George* was in a writing Poſture, and I ſaw him lay by his Pen and go away, and the Paper that lay before him was not dry, and was the ſame Hand with which Mr. *Aſhby*'s Note was writ: And Mr. *Aſhby* told Sir *George*, while they convers'd together, of ſome Inſtructions concerning a Commiſſion to make Sir *George* Phyſician to the Army.

Some Days after this, a Gentleman came to the Fathers at *Wildhouſe*, with Commands for them to attend the Queen at *Somerſet Houſe*; and there went the Fathers *Harcourt*, *Keines*, *Langworth*, *Fenwick*, and another, and I attended them thither, and waited in an Anti-chamber while the Fathers went in to the Queen; and I heard a Woman's Voice, ſaying, That ſhe wou'd aſſiſt them in propagating the Catholick Religion with her Eſtate, and that ſhe wou'd not endure theſe Violations of her Bed any longer, and that ſhe wou'd aſſiſt Sir *George Wakeman* in poiſoning the King: When the Fathers came out, I deſir'd to ſee the Queen, and had a gracious Smile from her; and while I was in her Preſence, ſhe aſk'd Father *Harcourt* if he had receiv'd the laſt 1000 *l.* and it was the ſame Voice that I had heard without, and there was no other Woman with the Queen: And in the ſame Month of *July* 10000 *l.*

was

was propos'd to Sir *George Wakeman* to poiſon the King, in the Preſence of *Harcourt*, *Fenwick*, and, I think, *Ireland*. *Aſhby* propos'd it in the Name of the Provincial, who had authoriz'd him ſo to do. And Sir *George* ſaid it was too little.

Otes depoſes that Sir *G. Wakeman* refus'd to accept 10000 *l.* for poiſoning the King.

L. C. J. How did the Diſcourſe begin?

Otes. There was a Meeting of the Fathers to this very Purpoſe, and there they break it to him, but how it was introduc'd I don't remember: And there were Letters preſently ſent to *Whitebread* that Sir *George* had refuſed 10000*l.* and *Whitebread* order'd the Fathers in *London* to propoſe 5000*l.* more, which was done, (but of this laſt Propoſal I ſpeak only by Hearſay) and it was accepted, and 5000*l.* receiv'd in Part, and Sir *George Wakeman*'s Name ſubſcrib'd to the Recept in the Book, which was kept by the Fathers at *Wildhouſe* ſometimes, and ſometimes by Mr. *Langhorn*.

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Sir *R. Sawyer*. What did you ſee writ in that Book?

Otes. Memorandum. Such a Day 15000*l. was propos'd to Sir* George Wakeman, *which he accepted:* And then underneath this Receipt: *Receiv'd in Part of this* 15000*l.* 5000*l. of Father* Harcourt, *by Order of* Edward Coleman. *George Wakeman.*

15000 l. accepted.

And there was the Goldſmith's Name to it; I can't be poſitive, but I think, in my Conſcience, in was *Raleys*. There was but one Date to the Memorandum and Receipt, and that was ſome Day between the Beginning and Middle of *Auguſt*; I can't tell where the Money was paid, for I was ſick at that Time.

L. C. J. Did you ſee the Commiſſion for Sir *George* to be Phyſician General of the Army?

Otes. Yes, I ſaw it in Sir *George Wakeman*'s Hands, when he was writing at Mr. *Aſhby*'s.

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L. C. J. What Note was that he left behind him there?

Otes. It was an Apothecary's Bill, I ſuppoſe.

L. C. J. Did you ever ſee Sir *George* write in your Life?

Otes. I ſaw him in a writing Poſture, and I ſaw him lay by the Pen, and when he was gone away

away the Ink was not dry, and the Gentleman who ſate by him was lame of both his Hands, and could not write. And it was the ſame Hand that was to the Letter to *Aſhby*, and to the Receipt for the Money.

Sir. *G. Wakeman.* Have you not ſaid poſitively, you did not know the Hand?

Otes. I do not remember I have ſaid ſo.

Sir *G. Wakeman.* Have not you ſaid before the King and Council, you never ſaw me, and did not know me?

Otes. My Lord, having been up two Nights, and very much indiſpos'd, I might not charge him ſo home then; but now I have a proper Light whereby I may ſee a Man's Face, I can ſay more to him: This is the ſame Gentleman.

Sir *G. Wakeman.* This is juſt *Coleman*'s Caſe, the Light was in your Eyes!

L. C. J. Did you ever ſee this Gentleman before he was at the Council.

Otes. Yes, I ſaw him at *Aſhby*'s Chamber two ſeveral Days, once was when the 10000 *l.* was propos'd to him.

Sir *G. Wakeman.* What Day was that Propoſal made to me?

Otes. It was made by Mr. *Aſhby* in *July* before he went to the *Bath*, in the Preſence of Father *Harcourt*, *Ireland*, and *Fenwick*.

Sir. *G. Wakeman.* He will be ſure to name thoſe who can be no Witneſſes: If he knew all theſe Things when I was examin'd before the Council, why did he ſay he knew nothing of me, but con-

Page 370. cerning a Letter written from Mr. *Aſhby* to Mr. *Fenwick*; and if he had ſaid what he does now, can any one think I ſhould have had my Liberty ſo long after.

L. C. J. Dr. *Otes*, why did you not give the ſame Evidence then you do now?

Otes. I can give an Anſwer to it by-and-by, when he has prov'd what I ſaid there. ——— As

Corker, Biſhop of *London.* to *Corker*, he had a Patent from the See of *Rome* to be Biſhop of *London*, and was privy and conſented to the Propoſal made by the Benedictine Monks, whereof he was one, to contribute 6000 *l.*

to

to the Society of *Jesus* towards carrying on the Design: He wrote it in a Letter from *Lamspring* in *Germany* in *August* last, that he consented to it; for he is President of the Benedictine Monks, and therefore it was necessary he should give his Suffrage; and he had been with Father *le Chaise* and the *English* Monks in *Paris*, and had given an Account how the Design went on in *England*; I saw it in the Letter which was directed either to Father *Harcourt* or Father *Howard*; I knew his Hand, having seen a Note he gave under his Hand to Mr. *Fenwick*, about the receiving some Money.

Then *Corker*'s Examination was shewn him, and *Otes* said, He knew it to be *Corker*'s Hand that was subscrib'd.

Otes. Corker used to dispose of the Queen's Charity, as it was call'd; but he employ'd it towards carrying on the Design, and said, He had the Queen's Order so to do.

Sir *R. Sawyer*. Was he privy to the Consult the 24th of *April*.

Otes. Yes; for he excepted against *Pickering*'s being employ'd, and said, It was more proper to have a Layman than a Religious that attended the Altar. Page 371.

L. C. J. Do you know that the 6000 *l.* was afterwards paid?

Otes. I believe it was paid, for our Fathers said they had receiv'd it.

Mr. *Recorder*. What say you to the rest of the Prisoners?

Otes. I can charge Mr. *Marshal* with being present at the Benedictine Convent, when the 6000 *l.* was agreed to be contributed; and I know he was privy to *Pickering*'s Undertaking to kill the King, because he said, they had better take a Layman, as *Corker* said: And as to *Rumley*, he was privy to the Contribution of 6000 *l.* and pray'd God it might have good Success, and that the Catholick Cause might once again flourish in *England*. This was in the Month of *August*.

Corker. You say I had a Patent to be Bishop of *London*, did I accept it?

Otes.

Otes. I saw it in your own Hand, and you said; You hoped it would not be long before you should exercise your Episcopal Function. I remember also as to *Marshal*, that he was present when some of the Fathers were laying Wagers the King would eat no more *Christmas* Pies, and he went Halves with one who laid he would not.

Marshal. How long have you known me?

Otes. I have known him these two Years, and seen him officiate at the Altar, but never convers'd with him.

Marshal. He says he has known me these two Years, and knew I was engag'd in this Business, it is strange he should never converse with me: What Day of the Month was this Consult?

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Otes. It was between the Beginning and the Middle of *August*; and 'tis a great Privilege that I tell you the Month.

Marshal. My Lord, it is impossible to make a Defence, if Circumstances of Time and Place be not mention'd.

Otes. It was at the Benedictine Convent, and either the Day before or the Day after the Feast of the *Assumption*.

Marshal. That is the 15th of *August*; now he hath vouch'd it positively.

Otes. Nay, I will not be positive.

L. C. J. If he will say so, let him; but People are not to be snapp'd up thus.

Otes. I do verily believe, it was the Day before or the Day after.

Marshal. Would this be Evidence against a Murderer or Highwayman, unless the Day were fix'd exactly?

L. C. J. You see he will not answer positively.

Marshal. Was I at any other Consult besides this?

Otes. Yes, you were the 21st of *August*, if that fell on a *Wednesday*, when Letters came from Archbishop *Talbot* giving an Account of the *Irish* Affairs; and desiring Commissions might be sent to *Ireland* for Officers in the Army that was to be rais'd: This was at the Benedictine Convent, and there *Marshal* agreed to the sending the Commissions, and to the poysoning of the Duke of *Ormond*.

mind. ——— My Lord, I desire I may retire, because I am not well.

L. C. J. You must stay till their Defence is over, but shall have any Refreshment.

Mr. *Bedloe* having been sworn, appear'd.

Sir *R. Sawyer.* Pray, speak your Knowledge concerning the Prisoners at the Bar.

Bedloe's Evidence of Sir G. *Wakeman's* Design of poysoning the King.

Bedloe. The latter Part of last Summer, I think, about the Beginning of *August*, I was in Mr. *Harcourt's* Chamber, and Sir *George Wakeman* came in, and took a Turn or two about the Room, and seem'd discontented, after which he said, *For what am I drill'd on thus in a Concern of this Importance? Is this a Business to be slighted? I have no Performance of your Promises.* Said *Harcourt*, *Why, what would you have? We are ready for you.* And Sir *George* answer'd, *Then I am ready for you*; and *Harcourt* took a little Note out of his Cabinet and gave it to Sir *George*, and said, *There is a Bill for you, I have been to Day at* Whitehall *and receiv'd it by the Queen's Order from such a Gentleman, and 'tis upon such a Man for* 2000 l. And Sir *George* answer'd, *'Tis well some Body gives me Encouragement; I have more Encouragement from my good Lady and Mistress than from any of you, Nay,* said *Harcourt*, *for Encouragement, that you shall not want, for the rest shall be paid in due Time*; and added, *But, Sir* George, *this must be well follow'd and closely observ'd, because so much depends upon it; for if we should miss to kill him at* Windsor, *and you miss your Way, we will do it at* Newmarket. And Sir *George* answer'd, *If I find you ready, I will be ready in all Things.* I do not remember whether the Word *Poyson* was mention'd, but I knew by what Mr. *Harcourt* and others had told me, that *Poyson* was meant by it: There was no Body in the Room but Sir *George*, Mr. *Harcourt*, and my self; and Sir *George* ask'd Mr. *Harcourt* who I was? And he answer'd, A Friend that had been long engag'd in our Business, and is to do the next great Work to yours: And Sir *George* went to see if his Bill would be accepted; and I believe the Bill was upon some Goldsmith in *Fleetstreet*, because a little while after I met him near St. *Dunstan's* Church, and ask'd

Page 373. 377.

aſk'd him if he had got his Bill accepted already, and he ſaid, It was accepted; and I ſaid, When is it to be paid? and he anſwer'd, He was to receive it in the Afternoon. I had known Sir *George* about five Years before, but was not very well acquainted with him, tho', upon the Character Mr. *Harcourt* had given me, I thought I might take the Freedom to aſk him thoſe Queſtions. I aſk'd *Harcourt* after Sir *George* was gone, Whether this was Part of the 15000 *l.* and he ſaid, We have not adjuſted that Matter yet, but he receiv'd this only as a preſent Supply; and I aſk'd, if it were for the old Buſineſs; and, ſays he, it is for the ſame Deſign, if we ſhould fail of other Means. And he did in a ſhort Time receive as much as made it up 5000 *l.*

L. C. J. What do you know of the other Priſoners?

Bedloe. I heard Mr. *Corker* talking with *le Fevre* what Letters they had receiv'd from beyond Sea, and how forward they were in their Proceedings here, about raiſing an Army, what Intereſt he had in the People, who had been ſent into the Country, and the like.

Corker. Did you hear ſuch Words, as *Killing*, *Army*, or *Deſign?*

Bedloe. Every one of thoſe Words were uſed, but I don't take upon me to ſay how they were plac'd: This Diſcourſe was in the great Court at *Somerſet-Houſe* in the Piazza, *July* was Twelve-Month.

Mr. *Ward.* What ſay you to Mr. *Marſhal?*

Bedloe. He hath carry'd the ſame Letters that I brought from beyond Sea, and communicated them to the Country Gentlemen of the Catholick Party that were Aſſiſtants to us, particularly to Sir *Francis Radcliff*; and he knew the Contents of thoſe Letters and the Anſwers to them.

L. C. J. What was the Purport of thoſe Letters?

Bedloe. I have brought a great many Letters, and they did all relate to what I have given Evidence off.

Sir *R. Sawyer.* Can you mention the Particulars of any one Letter.

Bedloe.

Bedloe. He hath twice, to my Remembrance, received Letters to communicate in the Country, concerning the Subversion of the Government and the introducing of Popery. Page 374.

Mr. *Ward.* What do you say to Mr. *Rumley?*

Bedloe. I have been told, he has communicated Letters relating to this Business in the Country, but I can say nothing of it to my own Knowledge.

Sir *G. Wakeman.* What Day is it you said I had this Discourse with *Harcourt*, and receiv'd a Bill from him? And how do you know it was a Bill for Money?

Bedloe. It was the Beginning of *August*, (I do not speak to a Day) and you read it aloud.

Sir *G. Wakeman.* Had I any Acquaintance with you?

Bedloe. No; but Mr. *Harcourt* told you who I was.

Sir *G. Wakeman.* And did I, on the first Sight of you, discover what would endanger my Life? Objection to *Bedloe's* Evidence

Bedloe. Ay, and would an hundred times more, if *Harcourt* had told you I was his Confident.

Sir *G. Wakeman.* You do not know me.

Bedloe. Yes I do.

Sir *G. Wakeman.* I call God to witness, I don't know I ever saw him before in my Life, and he has a very remarkable Face.

Bedloe. I was well enough acquainted with him when he was at the *Bath*, but that is some Years since; then I took Physick of him.

Sir *G. Wakeman.* I never was there but once, and that was about two Years ago: And tho' he tells you of a Bill deliver'd me, he neither mentions the Time when, nor on whom it was drawn; here are all the Marks of Falshood imaginable.

Marshal. Let him lay his Hand on his Heart, and declare in the Presence of God, if ever he saw me before he came to the Gate-House, and did not declare there that he was an utter Stranger to me? Page 375.

Bedloe. I had seen you before at the Benedictine Convent in the *Savoy*, and you did not deny but you had seen my Face.

Sir

Sir *William Waller* was ſworn.

He depos'd, That he went to the Priſon with *Bedloe*; and that *Bedloe* call'd *Marſhal* by his Name as ſoon as he ſaw him, and aſk'd him if he knew him; and *Marſhal* ſaid, He had ſeen his Face, but did not know him.

Marſhal. What Sir *William Waller* ſays I muſt oppoſe; for *Bedloe* himſelf knows, that he had Diſcourſe with me in a private Room before Sir *William Waller* came.

Bedloe. I went in with Sir *William Waller*, and I was in no other Room but the common Room, and Sir *William Waller* withdrew to the End of the Room while I aſk'd him ſome Queſtions.

L. C. J. He told Sir *William Waller* your Name was *Marſhal*, tho' you went by the Name of *Marſh*.

Marſhal. He might know my Name was *Marſhal* by them that took me; I had Letters about me then that were directed to me by that Name. But pray, Mr. *Bedloe*, when did you ever ſee me before you ſaw me in the Gate-Houſe.

Page 376.

Bedloe. I carry'd Letters to you, and uſed to converſe moſt with you in the *Savoy*.

Marſhal. Prove it by Man, Woman, or Child, that ever you were in the *Savoy* with me in your Life, and I will go to the Gallows, and not ſay one Word more.

Bedloe. I have Witneſſes, but I cannot produce them at preſent, they are in *Kent*.

L. C. J. It may be he has none to prove he ever was in *Weſtminſter-Hall* in his Life; for who could imagine ſuch a Queſtion ſhould be put to him?

Bedloe. My Lord, I lay in the *Savoy* half a Year at one *Woodroff*'s, and I gave Sir *William Waller* Directions to ſearch in the moſt material Places of it.

Sir *W. Waller.* Both *Otes* and *Bedloe* did give me Directions to ſearch the *Savoy*, and told me ſuch a particular Room where *Pickering* lay, and of ſuch a Cloſet, and many other Things.

Marſhal. Otes made Searches before, and *Bedloe* might have his Knowledge from him and others.

Bedloe. I gave Sir *William Waller* Directions to search under such a Bench in *Pickering*'s Apartment, where he found the Gun that was to kill the King. Page 377.

L. C. J. Well, Sir *George Wakeman*, will you call your Witnesses?

Sir *G. Wakeman.* Here is Mr. *Chapman*, Mayor of *Bath*, who receiv'd this very Note from Mr. *Ashby*, concerning my Directions for him at the *Bath*, and I think he has Part of the Letter still. Page 378. Sir *George* calls his Witnesses.

Otes. That Letter was at least half a Sheet of a Side, close written, wherein were those Passages I mention'd; and I remember, he was to take a Pint of Milk, Morning and Evening, and have so many Strokes at the *Bath*; but this was soon after Mr. *Ashby* came to Town, I believe, ten Days before he went to the *Bath.*

L. C. J. Was the Business of killing the King in the same Letter with the Physical Directions?

Otes. Yes, my Lord.

Then Mr. *Chapman* appear'd.

Chapman. The 17th of *July* last, Mr. *Thimbleby*, [i. e. *Ashby*] came to the *Bath*, he was about eighty Years of Age, very feeble and infirm: He told me Sir *George Wakeman* had recommended me to him, and desir'd I would provide a Lodging for him as near the King and Queen's Bath as I could, and I did so; then he show'd me a Letter from Sir *George*, of which this is the lower Part of half a Sheet of Paper; there was full Directions how to take the Physick, and after that for using the Bath, and then the Pump: I took off this *Latin* Bill which concerns me, and gave him the rest; tho' my Son and I both read the *English* Part, and upon the Word of a Christian, there was nothing mention'd of killing the King.

L. C. J. Do you know whose Hand it was? Page 379.

Chapman. No; nor was there any Name subscrib'd to it.

L. C. J. Then this cannot be the same Letter, for that Mr. *Otes* speaks of was Sir *George*'s own Hand, and his Name subscrib'd to it.

Sir *G. Wakeman.* I never writ any other Letter, but what was dictated to my Man, and sent by

Ashby

Ashby to the *Bath*; he has own'd before the Lords that I sent but one Letter; and had he mention'd what he has now to be in it, I had been taken into Custody; but I had my Liberty, and might have gone to *Constantinople* if I would; and certainly I should have provided for my self, if I had known my self Guilty, especially when I saw so many sent to Prison upon that Account.

Mr. J. *Atkins*. Mr. *Chapman*, was there any Milk mention'd in that Letter?

Chapman. No; it is ridiculous to drink Milk with the Waters, it will make it curdle.

Otes. That is not the Hand the Letter I saw was in; and the Direction of the Milk was for the Time he staid in Town.

Sir *G. Wakeman*. Why should I repeat the Number of the Strokes twice, and write two Letters about one Thing.

Page 380. Mr. J. *Pemberton*. This might be written to serve a Turn very well.

Hunt was call'd.

He depos'd, That his Master, Sir *George*, coming Home late and indisposed, and Mr. *Ashby* having sent for some Directions for the *Bath*, Sir *George* bid the Deponent take a Pen and Ink and write what he dictated; and when he had written, there was some Mistake in it, which Sir *George* bid him correct; and he writ it over fair after Sir *George* was a Bed, and carry'd it to Mr. *Ashby* before Sir *George* wak'd next Morning: And there were only Directions in it, what to do at the *Bath*; Mr. *Ashby* was to go the next Morning.

Mr. J. *Atkins*. Do you know any thing of Mr. *Ashby*'s drinking Milk?

Hunt. He was saying, he was advis'd by a Friend of his to drink Milk while he was in Town.

L. C. J. That is consistent with Mr. *Otes*'s Testimony.

Henningham was call'd.

He depos'd, That he was present at the writing of this Letter, and Sir *George*'s Servant wrote it as he dictated; and that there was no such Thing as *Otes* mention'd in it; and said farther,

that

that he heard *Ashby* say, he wanted Directions to go to the *Bath*.

Sir *Philip Lloyd* was call'd.

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Sir *G. Wakeman*. Pray, what did Mr. *Otes* say of me before his Majesty and the Council?

Sir *Ph. Lloyd*. It was on the 31st of *September*, Mr. *Otes* said, he had seen a Letter, to the best of his Remembrance, from Mr. *White* to Mr. *Fenwick* at St. *Omers*, wherein he writ, that Sir *George Wakeman* had undertaken the Poysoning of the King, and was to have 15000 *l.* for it, of which 5000 *l.* had been paid him by the Hands of *Coleman*: Sir *George*, upon this, was call'd in, and he utterly deny'd it all, and did carry himself as if he were not concern'd at the Accusation; and because they thought this Evidence not Proof enough to commit him, they call'd Mr. *Otes* again, and my Lord Chancellor desir'd him to tell, if he knew any Thing personally of Sir *George*; and *Otes* lift up his Hands and said, *No, God forbid I should say any Thing against Sir* George Wakeman, *for I know nothing more against him.*

Otes. I remember not one Word of all this.

Sir *G. Wakeman*. This is a Protestant Witness too as well as the other.

Otes. I do appeal to the whole Board, whether I was in a Condition to make any Answer at all, when, by reason of being hurry'd up and down, and sitting up two Nights, I was scarce *Compos mentis*.

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Otes's Evidence suspected.

L. C. J. Was Mr. *Otes* so spent that he could not say, *I have seen a Letter under Sir* George Wakeman's *own Hand*. Truly, Sir *George* urg'd it right, That he should not have been permitted to have his Liberty so long, if you had charg'd him home then.

He reflects on the Privy-Council.

Otes. They were such a Council as would commit no Body.

Mr. *Recorder*. That was not well said.

Sir *G. Wakeman*. He reflects on the King and Council.

L. C. J. You have taken a great Confidence, I know not by what Authority; but the Council's not committing him is an Argument to me, that

you did omit to charge him with this Letter at that Time.

Then Sir *George* desir'd a Copy of *Otes*'s Examination before the House of Lords might be read as Evidence; and Mr. *Sydcot* appear'd, and said, it was a Copy of the Record of the Lord's House.

An Examination taken in another Court cannot be read as Evidence, unless it be prov'd to have been taken upon Oath.

L. C. J. *North.* If there be a Record in any Court of Record, that such a one appear'd in Court, 'tis an Evidence that he was in Court, and a Record of it. But when there is an Examination in a Court of Record, these not passing the Examination of that Court, but being taken by the Clerks, we always in Evidence expect there should be somebody to prove that such an Examination was sworn and subscrib'd to.

L. C. J. Have you any Witnesses here can testify what Mr. *Otes* said there; and, particularly, what Answer he made to my Lord Chancellor when he ask'd him, How he knew it was your Hand? You should have had the Clerks here that made the Entry, or saw him set his Hand to the Examination.

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Sir *George* having no Witnesses, it was not admitted to be read.

Query. If a Clerk of the Council may be examin'd generally what was done at the Board.

Then he desir'd Sir *Philip Lloyd* might be examin'd what *Otes* and *Bedloe* depos'd before the Council-Board at their last Examination. But the Chief Justice was of Opinion, Such a general Question was not fit to be ask'd of a Clerk of the Council without Leave of the Board; and Sir *George* waiv'd it.

L. C. J. Mr. *Rumley*, have you any Witnesses?

Rumley. I think I have.

Sir *R. Sawyer.* There is no need of any; we have but one Witness against him, and he must be acquitted; but I desire Sir *Thomas Doleman* may be examin'd as to the Condition Mr. *Otes* was in when he was examin'd by the Council if he had any Thing against Sir *George Wakeman.*

Sir *Thomas Doleman* was sworn.

He depos'd, That *Otes* had been very much fatigu'd in running about in the Wet for two Nights together, with a Guard, in Search of the Conspirators and their Papers; and that when he was call'd

call'd before the Council, he was in ſo weak a Condition, he would fain have been diſmiſs'd; and that he was in ſuch Diſorder, the Deponent believ'd he was ſcarce able to give a good Anſwer when he was examin'd; and added, That Sir *G. Wakeman* did not deny the Charge ſo poſitively as one that had been innocent would, in his Opinion as well as others; but that Sir *George* there recounted the Services that he and his Family had done the Crown, and how inſtrumental they were in the King's Reſtoration, which gave Offence to the Council. Page 384.

L. C. J. Mr. *Corker*, what have you to ſay? *Corker's* Defence.

Corker. My Lord, it is an eaſy Matter to deviſe Crimes, and frame Accuſations againſt innocent Men, in ſuch a Manner that the contrary can't poſſibly be demonſtrated; therefore there ought to be ſome Probability in the Teſtimony as well as downright Swearing, otherwiſe Mr. *Otes* and his Companions may, upon their bare Oaths, by turns hang up all the innocent Men in the Nation: And then, he that ſwears, ought to be himſelf a credible Witneſs; but theſe who ſwear againſt me, are Men of ſcandalous Lives.

L. C. J. You muſt not heap up Contumelies and call Men Names when you have prov'd nothing againſt them: If you can prove any Thing, do it. Page 385. Witneſſes are not to be vilify'd without Proof.

Corker. Then, my Lord, as to the Probability of the Thing; Mr. *Otes* does not only make me guilty of this grand Conſpiracy, but he involves the Nobility, Gentry, and whole Body of the Catholicks in this Treaſon: And, can it be ſuppos'd, that ſo many Perſons of Honour and Eſtates, who were Men of unblemiſh'd Characters, and liv'd in Peace and Quiet under the Government of ſo good a King, ſhould hazard their Honours, Lives, Families, Bodies, and Souls in ſuch a Deſign, wherein ſo many Thouſands of People, and almoſt a whole Nation, were to be over-whelm'd; that ſuch vaſt Armies ſhould be rais'd, and Foreign Nations engag'd in the Plot, and no other Evidence, no farther Proofs of it, than the poſitive Oaths of Mr. *Otes* and Mr. *Bedloe*. The Improbability of the Plot in general.

L. C. J. Yes, for your Army there are Mr. *Dugdale* and Mr. *Prance*.

Corker. Conſidering what theſe Perſons are, their vile Oaths, the Encouragements they have met with, ſuch Endearments and Careſſes as they have found, their Teſtimony is not much to be regarded: As to Mr. *Otes* ſaying I went to
Page 386. *Lampſpring* in *Germany*, that is impoſſible, for that is in the farther Part of *Weſtphalia*, and I was not gone ſix Weeks: Then he ſays, I was Preſident of the Benedictines, and that therefore the Deſign could not go on without my being made privy to it, when it is very well known, and I ſhall be able to prove, that Mr. *Stapleton* was Preſident, and that I never was, by Mr. *Rumley*, who is one of the Lay Brothers of the Order.

L. C. J. He cannot be a Witneſs for you or againſt you in this Tryal.

Corker. Then, my Lord, when they came to ſearch for *Pickering*, Mr. *Otes* and the Officers came to my Chamber, and yet did not apprehend me till a Month after; now it is ſtrange, if I was *Pickering*'s Superior, as he ſays, and privy to all theſe Things, they ſhou'd not apprehend me; but my Name was not mention'd among thoſe he accus'd then, and this is a new Invention of his; and I refer it to the Conſideration of the Jury, whether, if he has ſaid in his Examination before the Lords, that he did not know any thing elſe but what he had declar'd of any Man whatever, whether this Charge ought now to be believ'd.

Page 387. L. C. J. *North*. Firſt prove what he ſaid before the Lords by Witneſs, and then make your Obſervations.

Page 390. *Corker*. I cannot prove it otherwiſe than by the Record, and I deſire it may be look'd upon.

L. C. J. That hath been anſwer'd already.

Then Mr. *Corker* call'd Mrs. *Ellen Rigby*.

Corker. I deſire ſhe may be aſk'd, whether I was not in the Houſe when the Search was made for

for *Pickering* in the *Savoy*, and he was taken; whether they then charg'd me with any Thing.

Marshal. And the same of me.

Mrs. *Rigby.* You were both in Bed then, and the Company that came in never ask'd for you; but when they saw you, said they had nothing to do with you: And Mr. *Otes* was there then.

Objections to *Otes*'s Testimony.

Corker. Now it is incredible he should search for Traytors, and, as he says, knew us to be such, and shou'd not ask for us: Nay, when he saw us, he shou'd leave us there, and never bid the Officers secure us.

Mr. J. *Pemberton.* Who ask'd you who were in the House, when you told them?

Rigby. There were five or six, particularly Mr. *Otes* and Mr. *Bedloe.*

Corker. Have you not heard that Mr. *Stapleton* is President of the Benedictine Monks?

Rigby. Mr. *Stapleton* hath been President these four Years and a quarter.

L. C. J. Who officiated in his Absence?

Rigby. I know not who, but Mr. *Corker* never did in his Life.

Corker. Pray ask her if she knows of any Consult of the Jesuits in the Benedictine Convent.

L. C. J. How should she know that?

Corker. Because none came to the House but she must entertain them; there was no other Servant but she.

Marshal. I desire she may be ask'd, if ever she saw Mr. *Otes* or *Bedloe* in the House in her Life?

Rigby. I saw Mr. *Otes* in the House this Summer was Twelve-Month; he came a begging. And Mr. *Pickering* bid me shut the Door and never let that Man come in again.

Marshal. This was in the very Heat of the Plot, and he was employ'd to carry on the Conspiracy, as he says: And that we should suffer him to be in such Necessity and sent away with a Flea in his Ear, when he cou'd gain such Advantages by discovering us, I appeal to the Court, whether this be probable —— And, my Lord, when I was apprehended, I was not sought for or nam'd as a Traytor, but coming accident-

ally into a Houſe where they were actually ſearching, tho' I ſaw the Conſtable at the Door and Lights in the Houſe, yet I went in and aſk'd if ſuch a one was within; and I think this Confidence might acquit me.

L. C. J. Sir *William Waller*, is this ſo?

Sir *William Waller*. When I came to ſearch that Houſe, I plac'd one at the Door, and order'd him to let any Body come in but no Body go out: And when I was ſearching, this Perſon came and knock'd at the Door, not knowing, I ſuppoſe, that the Houſe was ſearching; for when the Door was open'd, and he was let in, and underſtood it, he endeavour'd to get away.

Marſhal. I wou'd not willingly contradict Sir *William Waller*; but God is my Witneſs, I never knock'd, the Door was open, and I cou'd have gone away again afterwards if I wou'd: I was in an outward Room by my ſelf, and Sir *William* knows when they came back and found me there, the Conſtable and the reſt wonder'd I was not gone.

L. C. J. If you have any Witneſſes to prove it, call them.

Marſhal. If it were worth the while to prove, that if I wou'd I might have gone away, it might be made appear: But farther I ſhall ſhew

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that Mr. *Otes* was miſtaken in me, for he told Sir *William Waller* of a Mark that was behind my Head, and Sir *William Waller* made me pull of my Peruke and turn my Back that he might look for it.

Sir *William Waller*. When I brought him to Mr. *Otes* I did, indeed, deſire to ſee his Peruke off, to ſee if there was any Appearance of a ſhaven Crown, but I know nothing of a Mark: But this I know, as ſoon as he came in Mr. *Otes* call'd him by his Name.

Then *Marſhal* deſir'd Sir *Philip Matthews* might be call'd to teſtify that *Otes* ſaid he was a Stranger to him, *&c.* but Sir *Philip* did not appear.

Marſhal. Sure Sir *William Waller* knew that Prieſts do not go ſhaven here in *England*, where it is Death for them to be diſcover'd.

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Marſhal deſir'd he might have two or three Days Time allow'd him to ſend for Witneſſes, to prove he was at *Farnborough* in *Warwickſhire* in *June*, *July*, and *Auguſt*, when *Otes* had teſtify'd he was in Town, and ſaid, he hop'd the Court wou'd not throw away his Life, when in three Days Time he cou'd bring Witneſſes to prove it.

L. C. J. Then we muſt throw away the Lives of the Jury, for they muſt be kept faſting till they give their Verdict.

Marſhal. There have been thoſe who have been upon their Tryals [meaning *Whitebread* and *Fenwick*] and ſent back to Priſon without the Jury giving a Verdict, and after try'd again.

A Jury diſcharg'd without giving a Verdict.

L. C. J. The Jury were wholly diſcharg'd of them.

Marſhal. And if you have any regard to my Life, you may diſcharge them of me.

Then *Sumner* was call'd.

Marſhal. I deſire he may be aſk'd, If I had not Witneſſes here laſt Seſſions when I expected to be try'd, to teſtify I was at *Farnborough*.

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L. C. J. That is not a Queſtion to be aſk'd, what another Perſon can ſwear, but tho' it be improper, we will aſk him: Were you ſent down for Witneſſes?

Sumner. Yes, my Lord, and they came up.

L. C. J. Why are they not here now; the laſt Seſſions was adjourn'd to a certain Day?

Marſhal. Your Lordſhip thinks we have a better Purſe than we have, and, it may be, they cou'd not leave their Buſineſs, and be at the Charge of coming up again; but give me three or four Days Time and I will have them up.

Mr. J. *Dolben.* You knew as much before as you do now, or why did you ſend for them up then? And why then had you not them here to Day?

Then the Priſoners call'd Mrs. *Sheldon*.

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She depos'd, That Mr. *Stapleton* had been Preſident of the Benedictines for four or five Years, and that Mr. *Corker* never officiated for him.

Corker. Mr. *Otes* charges me poſitively only with conſenting to the Benedictines Contribution of

6000 *l.* which, he says, they could not do without my Leave, because I was President; now I desire it may be observ'd, here are several Witnesses who depose Mr. *Stapleton* was President, and that I never was in my Life.

Sir *George Wakeman.* It was imputed to me as a Crime that I did not, before the Council, sufficiently detest the Offence I was charg'd with: I now declare, that I detest and abominate the Crime laid to my Charge, and call God to witness I never was at any Consultation about it in my Life, nor ever receiv'd any Bill for Money upon this Account: And I wish I may never enter into the Kingdom of Heaven if I receiv'd one Farthing for any such Thing.

Corker. He says, I was employ'd in distributing Money: I protest, before God, I never distributed any Money upon such an Account; nor did I ever deliver or hold it as a Matter of Faith or commendable Doctrine, that it was lawful, for the promoting of the Catholick Religion, to murder the King or destroy my Country: Nor do I think that the Pope, or any one upon Earth, can grant a Dispensation for doing it.

The Prisoners urge the Protestations of the 5 Jesuits at their Execution, as an Argument against the Plot.

Marshal. If no Door of Mercy can be open'd upon any Consideration offer'd by the Living, yet the loud Cries of the Dying, the earnest Vows and solemn Protestations of Innocence, made by those who were lately executed, surely will have some Weight; for it must be confess'd, that either they conspir'd finally to damn their own Souls, or that they were not guilty of what they and we stand jointly charg'd with.

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Mr. J. *Pemberton.* Will you affront the Court, and vouch the Truth of those Speeches made at the Gallows, and affirm them to be innocent when they have been found guilty and executed according to Law?

Marshal. I only desire some Consideration may be had to the Words of those dying Men.

The Chief Justice answers that Objection.

L. C. J. If your Religion were not made up of Equivocation and Lying, and you had not Indulgencies and Dispensations for it; and if Killing Kings were not deem'd meritorious; if this were

were not avow'd by your Popes and great Men, your Argument might have ſome Weight: If you have any Thing to ſay in your Defence ſpeak it; but as for your Religion, we know what it is, and what merciful Men you are; you may have Tricks enough to gull your own Party, but Proteſtants can look through all your Acts.

Page 394. They diſclaim the King-killing and depoſing Doctrines, *&c.*

Corker. As to thoſe damnable Doctrines, we profeſs our ſelves innocent of them, and deſire the Jury may not go away with ſuch a Notion, that we entertain ſuch Principles of Religion; they are horrid Crimes, and I proteſt againſt them, and hope the Jury will take Notice of it.

The Chief Juſtice directs the Jury.

Then the Lord Chief Juſtice ſummon'd up the Evidence; and as to *Rumley*, he directed the Jury to acquit him, there being but one Evidence againſt him: And he ſaid, he thought *Otes*'s Evidence, as to Sir *George Wakeman*'s Hand-writing, was very ſlight; and *Bedloe*'s Evidence he did not ſeem to give much Credit to; nor did he think the Evidence of *Otes* and *Bedloe*, as to *Corker* and *Marſhal*, concluſive; but left it to the Jury to be guided by their own Conſciences.

Page 396. All the Priſoners are acquitted.

The Jury withdrew, and after about an Hour's Receſs, brought in all the Priſoners, Not Guilty.

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The TRYAL *of* CHARLES KERNE *for High Treaſon, in having taken Prieſts Orders, by an Authority deriv'd from the See of* Rome, *before the Lord Chief Juſtice* Scroggs *at* Hereford *Aſſizes, the* 4*th of* Auguſt, 31 Car. 2. 1679.

The Indictment for High Treaſon in taking popiſh Orders and coming into *England* (being a Subject of this Crown.)

THE Indictment ſet forth, That the ſaid *Charles Kerne*, late of *Weobly* in the County of *Hereford*, being a Native of this Kingdom of *England*, and made and ordain'd a Prieſt by an Authority deriv'd from the See of *Rome*, the 29th of *April*, in the 31ſt Year of the King, did

did traitorouſly come to and remain at *Weobly* aforeſaid, in the ſaid Kingdom, againſt the Form of the Statute in that Caſe made and provided, and againſt the King's Peace, *&c.*

To which Indictment he pleaded Not Guilty. After which a Jury was ſworn, and charg'd with the Priſoner; and then the Witneſſes for the King were call'd: And firſt,

Edward Biddolph was ſworn.

He depos'd, That he knew ſuch a Man as the Priſoner about ſix Years before, and had ſeen him at Mr. *Somerſet*'s at *Bollingham*, but he could not be poſitive this was the ſame Man.

Then *Margaret Edwards* was ſworn.

Margaret Edwards depos'd, That the 29th of *May* was twelve Month, one *James Harris* deſir'd her to go to Mrs. *Monnington*'s at *Sarnsfield*, for ſome Phyſick for his Wife who lay very ill, which ſhe did, and that Mrs. *Monnington* having diſcours'd with her about the ſick Woman, ſhe took the Deponent into the Chapel, and there ſhe ſaw *Kerne*, the Priſoner, at the Altar in a Surplice, *&c.* and that ſhe ſaw him deliver the Sacrament to four or five People there.

Page 402. Evidence that the Priſoner admin-ſter'd the Sacrament after the Manner of the Papiſts.

L. C. J. What did he ſay?

Edwards. He ſaid *Corpus Chriſti*, or ſome ſuch Words; I was then a Catholick my ſelf, and have receiv'd the Sacrament of Prieſts ſeveral Times, but I did not then.

L. C. J. Did you ever ſee him ſince?

Edwards. No.

Priſoner. I deſire ſhe and *Mary Jones*, the other Witneſs, may be kept aſunder, for ſhe has been inſtructing of her.

Edwards. I bid her take Care ſhe ſwore neither leſs nor more than the Truth.

I. C. J. And what did ſhe tell you ſhe wou'd ſay?

Edwards. She ſaid when ſhe liv'd at Mr. *Somerſet*'s, where Mr. *Kerne* uſually was, ſeveral People us'd to come thither, and go up into the Chamber; and once ſhe liſten'd and heard Mr.

Kerne

Kerne say something in *Latin*, which she said was Mass.

Prisoner. I desire to know where this Woman saw me first?

Edwards. At Mr. *Wigmore*'s at *Lucton.*

Prisoner. I never was at *Lucton* in my Life.

Mary Jones was sworn.

L. C. J. Did *Margaret Edwards* instruct you what you should say?

Jones. No: She ask'd me what I cou'd say against Mr. *Kerne*, and I told her that on *Sunday* Morning several People came to *Bollingham*, and went up after the Prisoner, and he said something aloud that I did not understand. Page 403.

L. C. J. Did not you tell her you heard him say Mass?

Jones. No, my Lord.

Then *Edwards* was call'd again, and averr'd that she did tell her so, and *Jones* still persisted she never did tell her so, for she did not know what it meant. The Witnesses being confronted, contradict one another.

L. C. J. Did you never see him give a Wafer, Marry, or Christen.

Jones. There was a Child christen'd in the House, and I was in the next Room and heard Words spoken by Mr. *Kerne*, and there was no one there but my Master and Mistress, Mr. *Latchet* and his Wife, and Mr. *Kerne.*

Prisoner. How cou'd you know a Voice?

Jones. Very easily; there was but a Wall between.

The Prisoner call'd Mr. *Hyet* as a Witness for him. The Prisoner call'd his Witnesses.

He depos'd, that *Margaret Edwards* acknowledg'd to him that she did not know Mr. *Kerne.*

Mr. *Weston*'s Maid was call'd.

She depos'd, that she saw *Edwards* instructing the other Witness *Jones*; which they both deny'd again upon their Oaths.

Mrs. *Monnington* was call'd.

She depos'd, That she did not know this *Margaret Edwards*, and that she never took up any Stranger to the Chapel in her Life.

L. C. J. Did

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L. C. J. Did Mrs. *Monnington* know you by Face or by Name?

Edwards. I had been at the Houſe ſeveral Times, and this Time I was carry'd up by *Mary Lewis* her Maid; and Mrs. *Monnington* told me that I muſt put a Plaiſter of *Diapalma* to the Woman's Back, and give her a Drink with Malt and Raiſins.

Mrs. *Monnington.* I might preſcribe the Plaiſter, but the Drink is no Receipt of mine.

Edwards. After we had talk'd of the ſick Woman, Mrs. *Monnington* fell into Diſcourſe about Religion, and underſtanding what I was, deſir'd me to go into the Chapel with her.

L. C. J. What kind of Chapel was it?

Edwards. When we came up Stairs, we turn'd in at a Door on the right Hand, and the Altar ſtood juſt before the Door, it was richly adorn'd, the Altar Cloth was white, and there was a fine Crucifix upon the Altar.

Mrs. *Monnington.* What were the Cuſhions off?

Edwards. As I remember they were Needle-Work: The Chapel had abundance of Pictures in it, and I think the Window was on the left Hand of the Altar.

Mrs. *Monnington.* We do not go off the Stairs into the Chapel as ſhe ſays, neither is it adorn'd as ſhe depos'd, or has any Needle-work in it: But here is my Maid, to whom I deliver all my Medicines, perhaps, can tell if ſhe was at the Houſe.

The Maid depos'd ſhe never ſaw this *Margaret Edwards.*

Edwards. I have often carry'd the Child, Mr. *Thomas Monnington*, to the Houſe: I lay with him, and tended him, and carry'd him abroad.

Mrs. *Monnington.* I don't remember ſhe ever brought the Child to me, but another Woman us'd to bring him.

Priſoner. My Lord, I hope I am not within the Statute for ſaying Maſs, for many ſay Maſſes who are not in Orders.

A Prieſt ſaying Maſs, Evidence of his being in Orders.

L. C. J. It is one of the greateſt Evidences to prove a Man a Prieſt that can be. Do you think

we

we can produce Witneſſes who ſaw you take Orders? And do any ſay Maſs but Prieſts?

Priſoner. That of Bread and Wine they do not.

L. C. J. Do any Chriſten but Prieſts?

Priſoner. Yes, they do in Extreams; and I do acknowledge I have read Prayers ſometimes —— I deſire your Lordſhip and the Jury will take Notice that I have taken the Oaths of Allegiance and Supremacy.

L. C. J. I ſuppoſe you will not deny that he who gives the Wafer is a Prieſt?

Priſoner. There is bleſſed Bread which others may give.

L. C. J. When you give ſuch Bread, do you not ſay, *Accipe Corpus Chriſti?*

Priſoner. We uſe no ſuch Words.

The Chief Juſtice, in his Directions to the Jury, told them there was one poſitive Witneſs, who ſaw him adminiſter the Sacrament; as to the other, indeed, ſhe only ſaid ſhe heard him ſay ſomething in an unknown Tongue thro' a Wall: But he thought Men might be diſtinguiſh'd by their Voices, and if they did believe that he did chriſten the Child there were two Witneſſes, and they muſt find him guilty. He ſaid it was a tender Point, and as he wou'd not ſhed innocent Blood, ſo neither wou'd he willingly let a popiſh Prieſt eſcape. The Chief Juſtice directs the Jury. Page 405.

Then the Jury withdrew, and being return'd into Court, brought in the Priſoner, *Not Guilty.* The Priſoner is acquitted.

The

Page 405.

The TRYAL *of* ANDREW BROMMICH, *before Lord Chief Juſtice* Scroggs, *at* Stafford *Aſſizes, the* 13*th of* Auguſt, 31. Car. 2. 1679, *for High Treaſon, in accepting Prieſt's Orders from the See of* Rome.

Some of the Jurors diſcharg'd for being thought popiſhly affected.

THE Sheriff acquainting the Chief Juſtice, that one *Allen*, whom he had return'd to ſerve upon the Jury, had ſaid that nothing was done againſt the popiſh Prieſts above, and therefore he wou'd do nothing againſt them here, or find them guilty, his Lordſhip diſcharg'd him of the Jury, and committed him to Priſon till he ſhou'd find Sureties for his good Behaviour, and diſcharg'd three others upon Suſpicion of their being popiſhly affected.

The Indictment, For that being a Subject of this Crown, he took popiſh Orders and reſided in *England*.

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The Indictment ſet forth, That *Andrew Brommich*, late of *Perry Bar*, in the County of *Stafford*, Gent. being a Native of *England*, and being made and ordain'd a Prieſt by an Authority deriv'd from the See of *Rome*, did, on the 13th Day of *January*, in the 30th Year of King *Charles* II. come to and remain at *Perry Bar* aforeſaid, within this Kingdom, contrary to the Form of the Statute in that Caſe made and provided, and againſt the King's Peace, *&c.*

To which Indictment he pleaded Not Guilty. Then a Jury were ſworn, and charg'd with the Priſoner, he challenging none of them, after which the Witneſſes were call'd: And firſt,

Ann Robinſon was ſworn.

Evidence of the Priſoner's adminiſtring the Sacrament after the popiſh Manner.

She depos'd, That ſhe, with ſeven or eight others, about *Chriſtmas* laſt, receiv'd the Sacrament of the Priſoner in a Wafer, according to the Church of *Rome*: And that ſhe receiv'd it of him four Times before, twice at Mr. *Birch*'s and twice at Mr. *Parſal*'s.

Priſoner. My Lord, I never gave it her, and I deſire it may be obſerv'd, that I have taken the Oaths of Allegiance and Supremacy, and have

not

not refus'd any Thing that may teſtify my Loyalty.

L. C. J. You Prieſts have Tricks to evade that.

Priſoner. I never abſconded.

L. C. J. What is that to giving a Woman the Sacrament ſeveral Times?

Priſoner. I conceive it was no Sacrament unleſs I was a Prieſt.

L. C. J. But we know none of you undertake to give the Sacrament in a Wafer, or ſay Maſs, but a Prieſt; and you gave the Sacrament in a Wafer to this Woman, therefore you are a Prieſt.

Jeoffery Robinſon was ſworn.

He depos'd, He had heard the Priſoner ſay ſomething in a Surplice, in an unknown Tongue, but he cou'd not ſay what it was.

Jane Robinſon was ſworn.

L. C. J. Did you ever hear the Priſoner ſay Maſs, or receive the Sacrament?

Jane Robinſon. I never ſaw him do any thing, I only went up and ſaid my Prayers, I took no Notice of any Thing; I don't know him.

L. C. J. Don't you know him neither, *Jeoffery?*

Jeoff. Robinſon. Not I, my Lord.

L. C. J. Why, did not you ſay you ſaw him in a Surplice, and heard him ſay ſomething in an unknown Tongue? You have no more Conſcience than your Prieſts allow you.

Ann Robinſon. They both took the Sacrament from him when I did.

L. C. J. Did you not receive the Sacrament with *Ann Robinſon* at Mr. *Purſal's*? Page 407.

Jeoff. Robinſon. Yes, my Lord.

L. C. J. Who gave it you?

Jeoff. Robinſon. I do not know.

L. C. J. He'll ſay no more than his Wife or his Prieſt will give him Leave. You ſee, the Man ſaid at firſt he was in a Surplice, and ſaid ſomething in an unknown Tongue, and he confeſſes he receiv'd the Sacrament with this *Ann Robinſon*; we cannot expect more poſitive Evidence from ſuch People: Come, read the Statute.

Then

Then the Statute, 27 *Eliz. c.* 2. was read, which makes it High Treaſon for popiſh Prieſts to remain in *England*, who were born within the Dominions of this Crown.

Priſoner. I deſire it may be obſerv'd, what *Robinſon* and his Wife ſaid before the Juſtice of Peace, when they were examin'd.

L. C. J. We are to take Notice only of what they ſay here.

Priſoner. They have ſaid here that they did not know me.

Page 408. The Chief Juſtice directs the Jury. That if they believ'd the Priſoner to be a Prieſt, from the Circumſtances, they might find him guilty, tho' there were not two Witneſſes that ſwore it poſitively.

The Chief Juſtice told the Jury, That they were not to give a Verdict that the Priſoner was a Prieſt, but, *That they believ'd in their Conſcience, upon the whole Evidence, that he was a Prieſt:* And to induce them to find him guilty, he ſaid, here was one poſitive Evidence, and another who had ſworn he had heard the Priſoner ſay ſomething in an unknown Tongue, and that he was in a Surplice; And he muſt leave it to them, whether they wou'd not believe the Teſtimony of one poſitive Witneſs, and the circumſtantial Evidence of the other Man, for they ſaw what Dangers we were in. He left it upon their Conſciences, whether they wou'd let Prieſts eſcape, who were the very Peſts of Church and State, and ſaid they had better be rid of one Prieſt than three Felons.

Then the Jury withdrew, and having continu'd without ſome Time, return'd with their Verdict, that the Priſoner was guilty. And the Chief Juſtice commended the Verdict, and ſaid, he ſhou'd have found the ſame himſelf.

The Priſoner is convicted.

The

The TRYAL *of* WILLIAM ATKINS, *before the Lord Chief Juſtice* Scroggs, *at* Stafford *Aſſizes, the* 13*th of*. Auguſt, 31. Car. 2. 1679, *for High Treaſon, in receiving Popiſh Orders, &c.*

Page 408.

THE Indictment ſet forth, That *William Atkins*, late of *Wolverhampton* in the County of *Stafford*, Gent. being born within the Kingdom of *England*, and made and ordain'd a Prieſt by an Authority deriv'd from the See of *Rome*, did, on the 5th of *December*, in the 30th Year of the King, come and remain within the Kingdom of *England*, (*viz.*) at *Wolverhampton* aforeſaid, againſt the Form of the Statute, the King's Peace, *&c.*

The Indictment, for being a Subject of *England* he accepted Popiſh Orders, and afterwards came into *England*.

To which Indictment he pleaded Not Guilty. And the ſame Jury were charg'd with him as had paſs'd upon the the Tryal of Mr. *Brommich*: Then the Witneſſes were call'd; and firſt, *William Jackſon* was ſworn: Who ſaid, He was preſent when the Priſoner was apprehended, and bound over to proſecute him, but could depoſe nothing farther.

Page 409.

Francis Wilden was ſworn.

He depos'd, He had heard the Priſoner at Prayers in an unknown Tongue, and he had a Surplice on; and that he had ſeen him give the Sacrament, after the Way of the Church of *Rome*, to ſeven or eight People, at Mrs. *Stanford*'s at *Wolverhampton*.

Evidence of the Priſoner's exerciſing his Function.

John Jarvis was ſworn.

He depos'd, he had heard the Priſoner ſay ſomething in an unknown Tongue: That he had confeſs'd to him, and receiv'd the Sacrament of him a great many Times, and he had his Prieſt's Habit on.

Brown was ſworn: And depos'd, He had gone to Confeſſion to him.

Dudley depos'd, He had been at Confeſſion, and ſeen the Priſoner perform ſeveral Rites according to the Church of *Rome*.

He makes no Defence, and is convicted.

The Priſoner made no Defence, whereupon the Jury found him *guilty*, and Sentence was paſs'd upon him and *Brommich* as Traitors.

Page 410. *The* TRYAL *of* THOMAS KNOX *and* JOHN LANE, *for a Miſdemeanour, in endeavouring to diſcredit* Titus Otes *and* William Bedloe, *two of the King's Witneſſes of the Popiſh Plot; at the King's Bench Bar, the* 25*th of* November, 31. Car. 2. 1679.

The Indictment, for a Miſdemeanour, in endeavouring to to defame *Otes* and *Bedloe* the King's Witneſſes, and thereby to ſtifle and obſtruct the Diſcovery of the Popiſh Plot.

THE Indictment ſet forth, That *Thomas Knox*, of the Pariſh of St. *Margaret's Weſtminſter* in the County of *Middleſex*, Labourer; and *John Lane*, of the ſame Pariſh and County, Labourer; well knowing that *Otes* and *Bedloe* had given Information againſt *Coleman*, *Ireland*, and *Grove*, and other falſe Traitors, who had conſpir'd the Deſtruction of the King, and the Alteration of Religion, and to levy War againſt the King, and to introduce Popery, *&c.* and for theſe Treaſons had been convicted, attainted, and executed: And alſo knowing that the Lords *Powis*, *Stafford*, *Bellaſis*, *Arundel*, *Petre*, and Sir *Henry Titchburn*, were accu'sd of the ſaid Treaſons, and committed to the Tower; and alſo were impeach'd by the Houſe of Commons for the ſame: And that *Thomas* Earl of *Danby* was alſo impeach'd of High Treaſon and other Miſdemeanours: They, the ſaid *Knox* and *Lane*, intending to ſtifle the Diſcovery of the ſaid Treaſons, and to evade the due Courſe of Law, and the Proſecution of Juſtice againſt the ſaid Lords, and

Page 411. Sir *Henry Titchburn*, did, on the 30th of *April*, in the 31ſt Year of the King, falſely and maliciouſly conſpire to ſcandalize and repreſent the ſaid *Otes* and *Bedloe* as wicked Perſons, and Men

of

of no Credit: And the Indictment farther sets forth, That the Defendant, *Knox*, by the Agreement of the said *Lane* and one *Osborn*, did cause several Letters to be written, wherein the said *Otes* and *Bedloe* were accus'd to have conspir'd falsly to charge the said Earl of *Danby*, and that *Otes* was a Person of a vicious Conversation, and wou'd have committed Sodomy upon the Person of the said *Lane*. The better to effect which wicked Designs, the said *Knox* gave several Sums of Money to the said *Lane* and *Osborn*, and offer'd them great Rewards: And this was laid to be against the Duty of their Allegiance, to the Obstruction of Justice, and against the King's Peace, *&c.*

To which Indictment the Defendants pleaded Not Guilty.

The Jury being sworn, and charg'd with the Prisoners, Mr. *Trenchard* open'd the Indictment: And Mr. Serjeant *Maynard* and Mr. Attorney General shew'd the Nature and Course of the Evidence, and acquainted the Jury that the Question to be try'd by them, was not whether the Lords and others, charg'd with the Treasons mention'd in the Indictment, were guilty of the Plot: But whether the Persons who stood here indicted were guilty of endeavouring to discountenance and suppress the Evidence, and scandalize the Witnesses who were to give Evidence against these Lords; and said, that the endeavouring to withdraw or disgrace the King's Evidence, in any Case, was not lawful, but it was a much greater Offence in Cases of High Treason; and seeing several had been attainted and executed for these Treasons, the Defendants had affronted and disparag'd the Justice of the Nation, which was not to be endur'd.

Sir Cr. Levins, Attorney General. Page 412.

Criminal to disgrace the King's Witness in any Case.

Then the Records of the Convictions of *Coleman, &c.* were about to be produc'd, but Mr. *Watkins*, of Council for the Defendants, admitted they were attainted, and that *Otes* and *Bedloe* were Witnesses at their Tryals: They also admitted the Impeachments of the Lords in the Tower.

Page 413.

Then Mr. *Radford* was ſworn.

The Evidence. He depos'd, That *Richard Lane*, Father to the Defendant, *John Lane*, was one of the Yeomen of the Guard, as the Deponent alſo was, and being upon the Guard together about a Twelve-Month ago, *Richard* told the Deponent, that Dr. *Otes* had attempted his Son ſeveral Times, in Order to commit Sodomy with him; but he ſaid this *Richard Lane* was counted a very lying Fellow.

Page 414. *Thomas Allen* was ſworn.

He depos'd, That *John Lane* being gone out of Dr. *Otes*'s Service, in *December* laſt he apply'd himſelf to the Deponent, and deſir'd he wou'd intercede for him that he might be admitted into his Service again.

Samuel Otes, Brother to *Titus Otes*, was ſworn.

He depos'd, That *Lane* went out of his Brother's Service a ſecond Time in *April* laſt, and a Fortnight before he went away, as he was talking and jeſting with the other Servants, the Deponent heard him ſay, he did not queſtion, e'er long, to find a Way to get a thouſand Pounds ——— Then he wou'd have proceeded to have teſtify'd what *Osborn* had ſaid of his conſpiring with the Defendants; but this the Lord Chief Juſtice ſaid ought not to be admitted as Evidence againſt the Defendants.

No Evidence ought to be given of what a Fellow-Criminal ſaid, who is not indicted with the Priſoners.

Mr. Serj. *Maynard*. Tho' it be not direct Evidence to convict the Defendants, yet it will enlighten that Evidence we ſhall give againſt them: And *Osborn* is laid in the Indictment, to join with the Defendants in this Conſpiracy, but he is run away.

Page 415.

Sir *Will. Scroggs*. L. C. J. Firſt prove ſome Fact againſt *Knox* and *Lane*, or the Court will direct it is no Evidence.

Sir *William Waller* was ſworn.

Evidence that *Lane* confeſs'd he was ſeduc'd by *Knox* to betray hi. Maſter *Titus Otes*. He depos'd, That upon the 29th of *April* laſt, as he was attending upon the Committee of Lords, who were appointed to enquire into the Plot, there was a Complaint brought before them of *Otes*'s having attempted to commit Sodomy with his two Servants, *Osborn* and *Lane*; whereupon the Lords order'd the Deponent and Mr. *Warcup*, being

being Justices of Peace, to take the Examinations of *Osborn* and *Lane*; and that *Lane* confess'd, he had been seduc'd by *Knox* to betray his Master, and swear several Things against him, which *Knox* dictated, but *Osborn* writ them over and sign'd them. And that there were some Letters and Informations produc'd by *Lane*, which *Lane* swore were carry'd by *Knox*, and *Osborn*, and himself, to Justice *Cheyney* of *Chelsea*, and that Mr. *Cheyney* refus'd to meddle in it; and they afterwards carry'd them to Mr. *Deny*, and he also refus'd to meddle in it: And that afterward *Knox* took private Lodgings for *Lane* and *Osborn*, that *Otes* might not find them out, and perswaded them to stand firm to what they had said, and they shou'd have a considerable Reward; and that *Knox* dropp'd a Guinea at a Tavern, and said, he wou'd not give it them, because then he cou'd swear safely he never gave them any Money. And *Lane* also depos'd, That *Knox* told him and *Osborn*, that my Lord Treasurer wou'd never have surrender'd himself to the Black Rod, unless they had promis'd to stand fast by the Evidence *Knox* had dictated.

L. C. J. What was the Substance of the Informations that *Lane* produc'd? Page 416.

Sir *W. Waller*. They were to accuse *Otes* of a Design of abusing his Body.

L. C. J. Was *Knox* ever before you.

Sir *W. Waller*. Yes; and to excuse himself, he said, he receiv'd the Papers from them [*Lane* and *Osborn*] and that they told him they had writ them out, being troubled in their Consciences, and desir'd him to go along with them to a Justice of Peace —— That as they were taking *Lane*'s Examination, *Knox* wrote a Note to him, which was convey'd thro' the Door to *Lane*; the Words were, *We always clubb'd, and you paid two Shillings at the Sugar-Loaf. Tear this.* And that *Lane* confess'd that it was agreed a- Page 417.
mongst them, that if any one of them shou'd discover, the other two shou'd murder him: And both *Lane* and *Osborn* confess'd, that *Knox* said, the Lords in the Tower wou'd not be wanting

to acknowledge their Kindneſs in diſparaging the King's Evidence.

L. C. J. Did you aſk *Knox* if he dropp'd a Guinea?

Sir *W. Waller*. *Knox* confeſs'd he dropp'd a Guinea, and alſo ten Shillings upon the Bed one Morning; but ſaid he lent it them, and they were to repay him again; he alſo confeſs'd, that the Papers ſo drawn up and deliver'd to him had been in the keeping of my Lord *Latimer* for a long Time.

Mr. *Warcup*, the other Juſtice of Peace, was ſworn.

He depos'd, That *Lane*, before the Lords of the Committee, did ſwear thoſe Things above mention'd againſt *Otes*. And that the Deponent afterwards heard *Lane*, before the ſaid Committee, beg their Pardon and God's Pardon for what he had ſworn, for it was falſe. That *Knox* Page 418. own'd his ſending up the Note mention'd before, *(Viz.) We always clubb'd, and you paid two Shillings at the Sugar Loaf. Tear this.*

L. C. J. This was, that he might not own he had been treated by him.

Mr. *Warcup*. And *Knox* own'd he lay with *Lane* and *Osborn* in ſeveral private Places, when there were Warrants for apprehending them, and that he had adviſ'd them where to lie, and paid for their Lodgings, but ſaid they were to pay him again; but that *Osborn* and *Lane* both ſwore that *Knox* paid for all, and treated them ſeveral Times at the Tavern, and bid them call for what they wou'd and they ſhou'd have it.

Mr. *Rix*, one of the Yeomen of the Guard, was ſworn.

He depos'd, That he help'd *Osborn* into Mr. *Otes*'s Service, but that both he and *Lane* came to the Deponent afterwards, and ſaid they were going away from Mr. *Otes*, and ſhou'd have Preferment; they were to have 100*l.* a Year, and 500*l.* a piece, and that they were ſworn Brothers: That another Time *Osborn* came to the Deponent and told him he was going to dine with one of the greateſt Peers of the Realm, and

that

that Mr. *Otes* muſt look to himſelf, for he had enough againſt him —— That, upon this, the Deponent teſtify'd this Matter before Juſtice *Warcup*, and upon ſome farther Information, the Lords directed Mr. *Warcup* to iſſue his Warrant for apprehending *Knox*, *Lane*, and *Osborn*, and they were taken; and that *Lane* deſir'd the Deponent, when they were in Cuſtody, to go to Sir *William Waller*, and he wou'd make a Confeſſion to him, which he did; and after he had made his Confeſſion, Sir *William* order'd he ſhou'd not be confin'd ſo cloſe as the other: That the next Day the Deponent was drinking with *Lane* again, and wou'd have paid the Reckoning, but *Lane* ſaid he ſhou'd not, for *Knox* had ſent him twenty three Shillings t'other Day, which wou'd ſerve till he got out: That the Nurſe of the Priſon told him a Gentlewoman, very well dreſs'd, deſir'd her to ſpeak to *Lane* to ſtand faſt, and that *Osborn* and *Knox* wou'd be ſure to ſtand faſt, and that they two wou'd be too hard for him, he being but a ſingle Evidence, and that he ſhou'd not want a Thouſand Pounds if he had Occaſion for it: And that *Lane* alſo told the Deponent he had receiv'd a Note much to to the ſame Effect —— That *Lane*'s Father and Mother told the Deponent, that my Lord Treaſurer wou'd never have ſurrender'd himſelf if he had thought *Lane* and the other two wou'd not have ſtood firm, and if they did not ſtand firm the Treaſurer wou'd loſe his Head; and that *Lane* ſaid the ſame himſelf —— And that *Lane* told the Deponent that *Knox* drew him in, and was the Author of theſe Papers above mention'd.

Page 419.

Slightam, the Under-Jaylor, was ſworn.

He depos'd, That *Knox* gave him three Half-Crowns to carry Notes from the one to the other when they were in Cuſtody, but the Deponent did not carry any: That after *Osborn* had confeſs'd, *Knox* told the Deponent that wou'd ſignify nothing, for two were better than one.

Mr. *Dewy* was ſworn.

He depos'd, That during the laſt Parliament, in *April* or *May*, a Meſſage was brought him one

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Night by his Servants as he was going to Bed, that one would ſpeak with him from my Lord *Latimer*; but the Deponent ſent the Perſon away and would do no Buſineſs that Night; and that a Day or two after *Knox* came to the Deponent with another Gentleman, and brought Papers in his Hand ready written, which he ſaid were Informations of one *Lane* and *Osborn* againſt Mr. *Otes*; but the Deponent told him, it was unuſual to take Informations againſt a Perſon who was abſent, if he might be found, becauſe he might croſs-examine the Witneſſes if he were preſent; and the Deponent diſmiſs'd them, and referr'd them to the Committee of Secrecy.

Where Informations are taken againſt any one by a Juſtice of Peace, the Party accus'd ought to be preſent if he may be had.

Mr. *Williams*. Pray tell the Subſtance of thoſe Informations.

Mr. *Dewy*. They charg'd *Otes* with ſome Crime; and *Knox* ſaid, they repented they had falſely accus'd my Lord Treaſurer; I think he ſaid, *Lane* and *Osborn* had overheard Mr. *Otes* and *Bedloe* conſpiring againſt my Lord *Danby*, but I did not look into the Information; and *Knox* ſaid, It was my Lord *Latimer* that directed them to come before the Deponent, which he wonder'd at, becauſe he did not know that Lord.

Henry Wiggins, Servant to *Bedloe*, was ſworn.

Page 421.

He depos'd, That *Knox* and he were together at a Publick-Houſe, where *Knox* deſir'd he would get Copies of his Maſter's Papers, eſpecially what concern'd my Lord Treaſurer, and to take a Journal of his Maſter's Actions, and the Names of thoſe that came to him; for, he ſaid, my Lord Treaſurer heard, that my Lord *Shaftsbury* and the Duke of *Buckingham* caball'd with *Bedloe* againſt him; and he offer'd to carry the Deponent to the Lord Treaſurer, who, *Knox* ſaid, would give him Encouragement. And, that *Knox* ſaid farther, that *Otes* and *Bedloe* were two great Rogues, and the King knew them to be ſo, and when he had heard all he could ſay, he would hang them.

Mr. *Williams*. Did *Knox* offer you any Reward?

Wiggins. He did not offer me any Sum, but ſaid, If I was turn'd away upon this Buſineſs, I ſhould have any Place in my Lord's Diſpoſal.

L. C. J. You never agreed to any Thing?

Wiggins. I told it my Maſter, and it was diſcover'd ſoon after to the Lords.

Mrs. *Wiggins*, the Mother of *Henry*, was ſworn.

She depos'd, That *Knox* came to her Houſe and enquir'd for her Son *Henry*, and that by Appointment they met at a Publick-Houſe at *Charing-Goſs*, where ſhe was preſent, and Mr. *Knox* made the aboveſaid Propoſal to her Son in her Hearing.

Mr. Serj. *Maynard.* Who came with Mr. *Knox* to you, Mr. *Dewy?* Page 422.

Mr. *Dewy.* Mr. *Blayden*, who is Steward to my Lord *Danby*, I think.

Then *Slighram* came and depos'd farther, That *Lane* told him in the Gate-Houſe Priſon, that he had a Guinea from *Osborne* or *Knox* to ſwear againſt Mr. *Otes.*

Mr. *Palmer* was ſworn.

He depos'd, That *Wiggins* firſt told him what Offers had been made him by *Knox*, and he acquainted *Bedloe* with it.

Thomas Dangerfield was ſworn.

He depos'd, That he was employ'd by the Lady *Powis* to carry *Lane* Money in the Gate-Houſe, and to ſolicit for his Liberty; that, particularly, he receiv'd twenty Shillings from Mrs. *Celier* by the Lady *Powis*'s Order, and ſent him; that *Knox* deſiring *Lane* would write ſomething to ſignify he continu'd firm, *Lane* wrote a Note to this Effect, *That he would die before he would comply with that Villain* Otes; *and if any good People would get him his Liberty, he would do the Catholicks great Service, by diſcovering what he knew of* Otes; *that this he wrote from the Bottom of his Heart, and ſhould die in it:* That the Note was carry'd to the Lady *Powis*, and ſhe and my Lord *Powis* were mightily rejoyc'd at it; and he was told, the Lady *Powis* was the greateſt Part of the next Day upon her Knees, giving God Thanks for the great Advantage their Cauſe had gain'd by it.

L. C. J. What, by gaining a Villain to their Side who ſwore backwards and forwards?

Danger-

Dangerfield depos'd farther, That after this he receiv'd Money ſeveral Times of Mrs. *Celier*, by
Page 423. the Lady *Powis*'s Order, towards procuring *Lane*'s Liberty, which at length he effected, and brought *Lane* to *Powis*'s Houſe; and my Lady order'd that he ſhould go by the Name of *Johnſon*, that *Otes* might not diſcover where he was; and that Mr. *Wood* came from my Lord *Powis*, and directed they ſhould take Care he did not go from the Houſe, for he having equivocated ſo often they were doubtful of him. ——— That my Lord *Powis* afterwards thinking it might be a Diſadvantage to their Cauſe, if *Lane* was found at his Houſe, directed him to be ſent privately into the Country, which the Deponent took Care to do. ——— That the Deponent, as ſoon as he had got *Lane* out of the Gate-Houſe, was employ'd to procure *Knox*'s Liberty, but he could not; and that *Knox* has ſince told the Deponent, that one Mr. *Nevil* had Money from the Lords in the *Tower* to procure his Liberty, which he at length obtain'd. ——— That, by Mrs. *Celier*'s Directions, the Deponent receiv'd ſeveral Papers from Mr. *Knox*, which contain'd a Charge againſt Mr. *Otes*, for attempting to commit Buggery with *Lane*; that theſe the Deponent ſent by Mrs. *Celier* to the Lords in the *Tower*, and from them they were ſent to Mr. *Nevil* to enlarge upon, and from him to the Lord *Caſtlemain* to enlarge upon them, and then they were deliver'd the Deponent again by Mrs. *Celier*, who order'd the Deponent to draw up an Affidavit according to thoſe Directions,
Page 424. and get *Lane* ſworn to it, which he did before Sir *James Butler*: That after this, the Deponent had no other Converſation with *Lane*, only he took Care he ſhould have the Ten Shillings a Week that was allow'd him by my Lord *Powis* after he came up to Town again. ——— That one Day *Knox* told the Deponent, *Osborn* was come over to him, and had given him an Account of his Maſter *Otes*'s Tranſactions, and that he had taken him before a Juſtice of Peace, and had made an Affidavit of it, but that *Knox* refuſed to let the Deponent have a Copy of it at that Time; but

that

that afterwards, at a Coffee-House at *Charing-Cross*, *Knox* shew'd it him, and it contain'd an Account of *Otes*'s attempting to commit Sodomy with *Lane*, agreeable to the Affidavit *Lane* himself had made; and that *Knox* said, He should do *Otes*'s Business. That the Deponent acquainted the Lady *Powis* with this; who ask'd what Condition *Knox* was in to prosecute this Business, and said, she believ'd the Lord *Danby* must furnish him with Money; but the Deponent acquainting her his Circumstances were very mean, she directed him to furnish *Knox* with Money; and *Knox* a little after applying himself to the Deponent, and telling him, he was in such Distress he must pawn his Sword, the Deponent let him have forty Shillings, and took a Note of him as if he had lent it him himself.

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Evidence that the Lady *Powis* supported *Knox* with Money.

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Then *Knox*'s own Information was read, the Purport whereof was, That *Osborn* came to him, told him he was a Servant to *Otes*, and that he had heard his Master *Otes* and *Bedloe* consulting how they might destroy the Lord Treasurer, and that his Conscience would not suffer him to rest till he had reveal'd it; that *Lane* also came to the said *Knox*, and gave him the same Account, and shew'd him several Papers, which were Memorials relating to his Majesty, the Queen, and Lord Treasurer, *&c.* and they both conjur'd *Knox* to keep this Secret, for they were afraid if this came to the Ears of *Otes* and *Bedloe*, they should be murder'd.

Knox's Information read against him.

A second Information was offer'd to be read, but there being scandalous Matter reflecting upon the King in it, 'twas laid aside.

Mr. *Withins*, of Council for the Defendant *Knox*, observ'd, That the Indictment consisted of two Parts; the first was, that the Defendants in *April* last did conspire against *Otes* and *Bedloe* who had discover'd the Popish Plot, to take away their Reputation, and render their Testimony of no Credit; the other Part was, That *Knox* had caus'd Letters to be written as from *Osborne* and *Lane* to him, purporting the Aspersions abovemention'd to be laid upon *Otes* and *Bedloe*. As to the

Page 427.

The Defence made by *Knox*'s Council.

That *Knox* was not in the Contrivance, but that the Information was brought him by *Lane* and *Osborn*.

the last Part of the Charge he observ'd, there had been made no manner of Proof of it; and as to the first, he did believe, indeed, that *Osborn* and *Lane* had a Design to disgrace *Otes* and *Bedloe*, and had a Design to draw in his Client *Knox* to countenance their Malice, but that he was not in the Contrivance; for before the Time in *April* when they brought the Papers to him, they had shewn them to several others, that there did not appear any Thing in the whole Evidence that *Knox* himself had sworn against Mr. *Otes* or *Bedloe*, so that there only appear'd a great deal of

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Weakness in *Knox* in believing such idle Persons, which he hoped would not be thought a great Crime in a young Man who had no Malice or ill Design in it, but apprehending he had met with a Discovery against his Lord's Life, was willing to prosecute the Business.

Frances Lane, Mother of *Lane* the Defendant, was sworn.

She depos'd, That in *March* last her Son told her, his Master *Otes* had used him very uncivilly, and she perswaded him to come away from him; but the Times being hard with her, she after-

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wards consented to his going to him again; and she hop'd Mr. *Otes* would not have offer'd any such Thing to him any more.

L. C. J. Is this material?

Mr. *Scroggs*. It shews, that they offer'd at this Discovery before *Knox* was concern'd with them.

Mary Lane, Sister to the Defendant, was sworn.

She depos'd, That *Osborn* brought Papers to their House, concerning the King, and the Queen, and the Lord Treasurer, and concerning *Otes*'s Attempts on her Brother.

Mr. *Withins*. My Lord, we say for Mr. *Knox*, he had no Part in the Malice of the Contrivance, and therefore ought not to be punish'd with them.

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The Defence made by Mr. *Holt* of Council with *Lane*.

Mr. *Holt* being assign'd Council for the Defendant *Lane*, observ'd, That Evidence had been given only of Part of the Charge in the Indictment; and that the Proof not being proportionable to the Charge, his Client ought to be found

Not

Not Guilty, otherwiſe he might become liable to a ſeverer Puniſhment than the Crime prov'd would juſtify.

L. C. J. Tho' all the Facts in the Indictment are not prov'd, yet if there be enough to prove your Contrivance to diſcredit them, that is ſufficient.

If ſeveral Things are laid in the Indictment, whereby it is alledg'd the Perſon is defam'd, if any one of the Things be prov'd, the Jury may find the Defendant guilty in general.

Mr. *Holt.* If the Jury do not find them not guilty generally; may they not find them not guilty of writing the Letters?

L. C. J. No; for if they lay five Things, and prove but one of them, and that tends to the Diſparagement of *Otes* and *Bedloe*, which is the Subſtance of the Indictment, that maintains the Indictment.

L. C. J. Mr. *Williams*, what can you ſay as to the Tranſactions of your Client *Knox* with *Dangerfield*? You would have it a Contrivance of *Lane* and *Osborn* between themſelves, and that your Client only went with them before a Juſtice of Peace, hearing ſomething that might affect his Maſter the Earl of *Danby*, which he believ'd to be true, and ſo thought he had done but his Duty in it. But what can you ſay as to his ſending that Note, *We all clubb'd together, and you paid two Shillings at the Sugar-Loaf. Tear this?* By which to me he ſeems to intimate, that he would not own he had ſpent any Thing upon them, tho' he had been bountiful to them; and then his giving the Man Money to convey Notes, that they might not betray one another; do not theſe, and the Tranſactions *Dangerfield* ſpeaks of, imply a Conſpiracy. And then *Knox* owns too, that he took thoſe Informations before they were ſworn, and carry'd them to my Lord *Latimer*; and that he took Lodgings for *Osborn* and *Lane*, and lay with them when the Lords were in Purſuit of them. What can you ſay to this?

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Mr. *Saunders.* My Lord, Mr. *Dangerfield* himſelf ſwears, that *Lane* brought him a Paper containing the ſame Matter that he did falſely accuſe *Otes* of, and he got it ſworn before Sir *James Butler.* My Lord, I will put the Cauſe upon that Point, Whether Mr. *Dangerfield* did not believe it to be true at that Time?

L. C. J.

L. C. J. And ſo you would have it, that as Mr. *Dangerfield* might be deceiv'd into a Belief of the Truth of the Information, ſo might Mr. *Knox*; but *Dangerfield* has not done thoſe ſubſequent Acts as *Knox* has done.

Then the Court ſaid, The Caſe was clear againſt the Defendants, and they did not ſee there was any Occaſion to ſum up the Evidence.

The Defendants convicted.

Whereupon the Jurors laid their Heads together, and found the Defendants Guilty, without ſtirring from the Bar. *Then the People gave a great Shout.*

The Defendants being order'd to come into Court, *Knox* deſir'd to ſpeak a Word for himſelf, but the Court would not admit him, and they were taken into Cuſtody.

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The TRYAL *of* LIONEL ANDERSON, *alias* MUNSON, WILLIAM RUSSEL, *alias* NAPPER, CHARLES PARRIS, *alias* PARRY, HENRY STARKEY, JAMES CORKER, WILLIAM MARSHAL, *and* ALEXANDER LUMSDEN; *and the Arraignment of* JOSEPH KENRISH *for High-Treaſon, in accepting Popiſh Orders, and afterwards remaining in the Dominions of this Crown; at the* Old-Bayly, *the* 17*th of* January, 31 Car. 2. 1679.

Kenriſh indicted and arraign'd for remaining in *England*, having receiv'd Popiſh Orders.

Joſeph Kenriſh was indicted by the Name of *David Joſeph Kenriſh*, of St. *Giles*'s *in the Fields*, in the County of *Middleſex*, Clerk; for that he being born within the King's Dominions, and being made and ordain'd a Prieſt by an Authority deriv'd from the See of *Rome*, after the 1ſt Year of Queen *Elizabeth*, and before the 15th of *November*, in the 30th Year of the preſent King, did traitorouſly remain and abide in the ſaid Pariſh of St. *Giles*'s in the County aforeſaid, contrary

trary to the Form of the Statute in that Case made and provided.

To which Indictment he pleaded Not Guilty; but being very ill, the Court directed he should be carry'd back to Prison till he was recover'd.

But being sick, was remanded to Prison.

Then the rest were arraign'd, being severally indicted on the aforesaid Statute, for remaining in *England*, having receiv'd Priests Orders from *Rome*: And to their several Indictments respectively pleaded Not Guilty; only *Marshal* and *Corker* objected, they were try'd for High-Treason before and acquitted, and therefore they thought they could not be try'd again for Treason: But they were told, that was for being in the Plot, and this was for being Priests and remaining in *England*, which was another Species of Treason. Then *Marshal* said, That being a Priest alone was not Treason by the Statute, and desir'd Council to argue that Point of Law; but the Court told him he must plead first; and accordingly *Marshal* and *Corker* pleaded Not Guilty, as well as the others.

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Anderson, &c. indicted also for accepting Popish Orders, &c.

Marshal and *Corker* object, they had been already try'd for Treason and acquitted; but are told, that was for compassing the King's Death, &c. which is another Species of Treason.

The Jurors being call'd, the Prisoners did not challenge any of them, and the first Twelve were sworn. And *Anderson* was set to the Bar, and the Jury were charg'd with him.

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Mr. *Belwood* having open'd the Indictment against *Anderson*; *Anderson* said, As to the Crime of staying in *England* with which he was charg'd, he staid by the King's express Command, and had an Order for it from the Council-Board; but the Lord Chief Justice acquainted him, if he had such an Order he must apply himself elsewhere, their Business was to try whether he had offended against the Statute whereon he was indicted.

Anderson first try'd.

The King's Order for his staying in *England* will not avail him here.

Sir *John Keyling* observ'd, That this Statute was made above a hundred Years ago, on Account of the many Attempts the Popish Priests had made to seduce the People, and incite Rebellions against the Government; that it was true, thro' the Lenity of our Princes, the Statute had lain dormant almost ever since; but the Occasion being reviv'd at this Time, for the remedying of which

which that Statute was principally made, (*viz.* their raising Seditions and Rebellions against the Government) the present Prosecution was thought necessary.

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One who accepts Popish Orders, owns a foreign Authority and rejects his Sovereign's.

Mr. Serj. *Strode* added, That it was not purely his Priesthood which was the Crime he was try'd for, but that having receiv'd Orders from the See of *Rome*, he did remain here contrary to the Statute, and for that he own'd a foreign Authority, and rejected his Sovereign's.

Then the King's Witnesses were call'd, and first, Mr. *Dangerfield* was sworn.

Dangerfield depos'd, That in *May* or *June* last, when he was Prisoner for Debt in the *King's-Bench*, Mr. *Anderson* took him in private, and shew'd him a Letter from the Lady *Powis*, wherein she told *Anderson*, He must advise *Willoughby* [i. e. *Dangerfield*] to scower his Kettle; by which was meant, that the Deponent should confess and receive the Sacrament to be true to the Cause; and that accordingly the next Day, being *Sunday*, the Deponent went to *Anderson* to Confession, and receiv'd Absolution; and he sent the Deponent to another, who was saying Mass at that Time, to receive the Sacrament; and afterwards the Deponent return'd to *Anderson* again, and he gave him a Toleration to go and be drunk with one *Stroude*; and the Deponent asking, If he might lawfully do it just after receiving the Sacrament? *Anderson* said, Yes; and that he gave him Authority so to do, it being for the Good of the Cause: For the Deponent was employ'd by the Catholicks to endeavour to bring over *Stroude* to be a Witness for the Lords in the *Tower*, and to invalidate *Bedloe*'s Testimony.

Dangerfield deposes, that he went to Confession to *Anderson*.

Deposes, he had an Indulgence from *Anderson* to be drunk as soon as he had receiv'd the Sacrament.

Anderson. Here I am upon my Life and Death; and I wish that all the Punishments of Hell and Damnation may come upon me, if ever I open'd my Mouth to this Rogue about any such Business.

Sir *W. Scroggs*, Lord Ch. Justice.

L. C. J. We must not suffer this Language; let us have that Respect shewn us that is fitting, and so shall you: If you will ask him any Questions you may.

Anderson.

Anderſon. If *Dangerfield* and I was ſo well acquainted, ſome Body muſt have ſeen us talk together one Time or other; now, if he can produce any one Perſon that can teſtify he ſaw me ſpeak to him, I will be hang'd and ſay no more.

Mr. J. *Atkins.* He need not bring Witneſſes to that; he ſwears the firſt againſt you poſitively.

Anderſon. But, my Lord, the Witneſſes ſhould be creditable People; and this Man has been pillory'd twice, broke Priſon once, and committed other heinous Offences; and I can produce that worthy Gentleman, Mr. *Manſel*, as a Witneſs, whoſe Blood that Villain deſign'd to have ſhed; but upon the Colonel's urging his having been ſet in the Pillory, tho' *Dangerfield* then bore that magnificent Title of the *King's Evidence* as he does now, the Colonel was ſet at Liberty.

Page 436. *Dangerfield's* Teſtimony objected to, having been in the Pillory; the Record of his Conviction not being produc'd, he is held a legal Evidence.

L. C. J. If you have not the Record here, this won't avail you.

Mr. *Otes* was ſworn.

Mr. Serj. *Strode.* Dr. *Otes*, will you tell your Knowledge of this Matter?

Otes. He is a Prieſt, I have heard him ſay Maſs.

Otes's Evidence, that the Priſoner perform'd the Function of a Prieſt, and it is not neceſſary to prove his Ordination.

Anderſon. 'Tis true, I have ſaid Maſs, but that is no Proof of my being a Prieſt; for the Law makes a Difference, and only ſets a Pecuniary Mulct of 200 Marks, and a Year's Impriſonment upon one that ſays Maſs.

Otes. My Lord, I have been at Confeſſion with him, ſeen him conſecrate the Sacrament, and have ſeen his Prieſt's Orders. He is a *Dominican* Fryar.

Anderſon. Can you prove that I receiv'd Orders from the See of *Rome?*

L. C. J. If you mean that this Statute ſhould never have any Effect, or a Prieſt be convicted on it, unleſs we can produce Witneſſes that ſaw him take Orders, then indeed you might avoid the Statute: But when it is plainly prov'd that you have done thoſe Acts that none but a Prieſt are allow'd to do, it muſt convince all the World, that this Iſſue, whether you are a Prieſt or not, is well prov'd.

Otes. He confeſs'd to me he had Orders from *Rome.*

Anderſon. How comes it to paſs, that I did not come here in a yellow Coat: I ought to be arraign'd for a Fool rather than a Traitor if I told him ſo. ——— Does he know me to be an *Engliſhman* too?

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Otes. You ſaid you were an *Engliſhman*, and the Son of an *Engliſh* Gentleman.

Bedloe was ſworn.

Bedloe appears perjur'd in his Evidence againſt *Anderſon.*

Bedloe. He is a Prieſt and an *Engliſhman*, Son of Mr. *Anderſon*, a Gentleman of 2 or 300 *l.* a Year in *Oxfordſhire.* I know him and his Father very well.

Anderſon. Was I guilty of being acquainted with ſo great a Rogue as this Fellow, I would have been my own Executioner, and not expected my Sentence here: My Father has the Honour of being well known to my Lord Chief Baron, who knows this to be falſe.

L. C. Baron. Mr. *Bedloe*, he is a Gentleman's Son of Quality in *Lincolnſhire.*

Anderſon. And yet this Rogue can ſay this upon Oath; but, indeed, his whole Life has been full of ſuch Miſtakes.

Bedloe. My Lord Privy-Seal's Nephew told me ſo.

L. C. J. Have you heard him ſay Maſs?

Bedloe. I have ſeen him adminiſter the Sacrament in his Prieſt's Habit; I think it was at the *Venetian* Ambaſſadors; but I'm ſure 'twas in ſome of the Ambaſſadors Houſes.

Prance was ſworn.

He depos'd, He had ſeen him ſay Maſs ſeveral times at *Wildhouſe*, and give the Sacrament to a whole Rail full of People, and had ſeen him take Confeſſions.

The Priſoner ſays he wrote in Defence of the King's Power againſt the Pope's Supremacy.

Anderſon. I can prove I never did ſay Maſs at *Wildhouſe*, or went to the Chapel; for ſome would have had me excommunicated, for writing for the King's temporal Juriſdiction over all his Subjects independant of the Pope, as appears by a Letter from the Biſhop of *London* on my Behalf to Sir *Clement Armiger.* I am well known to moſt

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of

of the dignify'd Clergy in *England*; I won't deny I have ſaid Maſs, but I am confident I have not ſaid Maſs in any Popiſh Church theſe ten Years: I would not tell a Lie to ſave my Life, or to take away the Life of the greateſt Villain upon Earth: no, not of that Rogue [*pointing to Dangerfield*]: But I proteſt, my Lord, there is not one Word that has been ſworn againſt me true, unleſs what *Otes* ſays concerning my ſaying Maſs. And, my Lord, I can prove it to your Lordſhip by Authority, that it was the Opinion of all the Judges about nine Years ago, deliver'd to the King and Council, upon a Queſtion about the Laws concerning Popiſh Recuſants, that this Law was only made *in terrorem*.

Says, the Judges had deliver'd their Opinions, that this Law was made only *in terrorem*.

Mr. J. *Pemberton*. You muſt not be permitted to talk thus.

Mr. J. *Dolben*. Will you arraign the Judges here?

L. C. J. 'Tis very true, our Kings have not put this Statute in Execution with Rigour, till you your ſelves gave Occaſion for it; but now 'tis neceſſary, for the Preſervation of the King's Life, againſt which your Contrivances are ſo bent.

Mr. J. *Pemberton*. You muſt employ your Time otherwiſe if you intend to be heard.

Anderſon. Then I deſire theſe Things may be prov'd, 1. That I am an *Engliſhman*: 2. That I took Orders from *Rome*: And 3. That I did abide here contrary to the Statute; for this being a Penal Law, the Facts ought to be prov'd poſitively, and the Perſon accus'd is not to be preſum'd guilty from Circumſtances.

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L. C. J. You have prov'd the firſt your ſelf in your Appeal to my Lord Chief Baron.

Mr. J. *Ellis*. And, I think, you do not deny that you are a Prieſt.

Anderſon. But, my Lord, I having given ſeveral Teſtimonies of my Loyalty and Obedience to the Government, I deſire your Lordſhip will pleaſe to ſtay till you know the King's Pleaſure.

L. C. J. We are to try the Fact, whether you are a Prieſt or no; and I may appeal to your own Con-

Conſcience, whether this has not been evidently prov'd to the Satisfaction of all Mankind.

Anderſon. But 'tis all by Preſumption ſtill.

The Ch. Juſtice directs the Jury.

Then his Lordſhip directed the Jury, and ſaid, 'Twas true, ſome kind of Evidence there ought to be given of his being an *Engliſhman*; and here they heard him ſpeak the Language, and acknowledge himſelf to be born of *Engliſh* Parents, and then he ought to be preſum'd an *Engliſhman*, unleſs he brought Proof of his being born beyond Sea; and as to his being a Prieſt, his performing the Offices of a Prieſt, as had been prov'd, was ſufficient Evidence of that.

One born of *Engliſh* Parents and ſpeaking *Engliſh*, ſhall be preſum'd to be born in the King's Dominions, unleſs the contrary be prov'd.

Anderſon. The Clerk does at Maſs give Abſolution.

The Clerk abſolves the Prieſt at Maſs.

Otes. My Lord, the Clerk who ſerves at Maſs, gives, *pro forma*, Abſolution to the Prieſt, without which the Prieſt cannot approach to the Altar; ſo, after the Prieſt hath made a general Confeſſion for the whole Congregation, the Clerk abſolves the Prieſt, that he may abſolve the Congregation.

L. C. J. Well, the Fact is plain, and we muſt never expect to convict a Prieſt upon this Statute, if ſuch Proof is not ſufficient.

Mr *Corker*'s Tryal.

Then Mr. *Corker* was ſet to the Bar, and the Jury charg'd with him; and Mr. *Belwood* having open'd the Indictment, the Witneſſes were call'd, and firſt, Mr. *Otes*.

He is Titular Biſhop of *London*.

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He depos'd, That *Corker* was a Benedictine Monk, and one of the Queen's Prieſts, and he had heard him ſay Maſs at *Somerſet-Houſe* and at the *Savoy*; and had ſeen his Patent to be Biſhop of *London*.

Mr. *Bedloe* was call'd.

A Convent in the *Savoy* ſuppreſs'd.

He depos'd, That before the ſuppreſſing the Convent in the *Savoy*, he had ſeen *Corker* wear the Habit of a Benedictine Monk, and he had ſeen ſeveral People Confeſſing to him, and he gave them Abſolution at *Somerſet-Houſe* Chapel.

Prance was call'd.

He depos'd, That he had ſeen *Corker* ſay Maſs at Mr. *Paſton*'s in *Duke-ſtreet*.

L. C. J. What do you ſay for your ſelf.

Corker.

Corker. I do proteſt before God and the Court, I never ſaid Maſs or heard Confeſſions at *Somerſet-Houſe* Chapel, or at Mr. *Paſton*'s in *Duke-ſtreet*. And as to my being in the *Savoy*, as my Denyal will not clear me of it, ſo I beg I may not be my own Accuſer.

L. C. J. Gentlemen of the Jury, you have it prov'd by three Witneſſes, that he hath ſaid Maſs, receiv'd Confeſſions, and deliver'd the Sacrament, and you have heard what Order he is of.

Then Mr. *Marſhal* was ſet to the Bar, and Mr. *Belwood* having open'd the Indictment, *Otes* was ſworn again, and depos'd, That he had heard *Marſhal* ſay Maſs a dozen times within three Years, and that he had ſeen him conſecrate the Hoſt, and give the Sacrament. Page 441. Mr. *Marſhal*'s Tryal.

Marſhal. Unleſs he names the Day, how is it poſſible to diſprove him.

L. C. J. It is an improper Queſtion that you aſk.

Mr. J. *Pemberton.* He is not bound to name the Day.

Otes. I will pitch upon a Time; I heard him ſeveral times laſt Summer was Twelve-Month, and ſeveral times the Winter before.

Bedloe was ſworn, and depos'd, That he had ſeen *Marſhal* in the Habit of a Benedictine Monk in the *Savoy*, but he never ſaw him execute any Part of the Office of a Prieſt.

L. C. J. If you have any Thing to ſay for your ſelf, pray ſpeak.

Marſhal. If there be but one Witneſs, I need make no Defence.

Sir *John Keyling.* Then ſwear Mr. *Prance.* [*which was done.*] What did you hear *Marſhal* ſay at his laſt Tryal?

His Confeſſion, that he was a Prieſt when he was try'd for the Popiſh Plot, brought as Evidence againſt him.

L. C. J. This is hard Evidence truly.

Prance. I heard him ſay to *Corker* at that Tryal, Tho' we are Prieſts this does not reach us.

L. C. J. But is this good Evidence? Page 442.

Prance. I did hear him ſay he was a Prieſt.

Mr. J. *Pemberton.* We did all hear him ſay ſo, I believe.

Marſhal. If a Man do confeſs at another Time without other Proof, that will not do.

L. C. J. Don't be over confident of that.

Mr. J. *Ellis.* If he has confeſs'd it, ſure that is Proof enough.

Dugdale alſo was ſworn again, and depos'd, That to the beſt of his Remembrance he heard *Marſhal* own he was a Prieſt.

Marſhal. If I did ſay ſo, it muſt be to the Court, and then it muſt be upon ſome Queſtion aſk'd me.

L. C. J. If you appeal to the Court, I'm afraid it will do you no Good.

Marſhal. If Mr. *Otes* heard me ſay Maſs that Summer he ſpeaks of, it muſt be either in *June*, *July*, or *Auguſt*.

L. C. J. Mr. *Otes*, when did you firſt hear him ſay Maſs?

Otes. In the Year 1677, before I went to *Spain*.

Marſhal. He ſays, he was reconcil'd to the Church of *Rome* but a little before he went.

Otes. I was reconcil'd on *Aſhwedneſday*, and I went in *April* following.

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Marſhal. Well, the only material Witneſs againſt me now, was a Witneſs againſt me at my laſt Tryal; now I conceive, I being found Not Guilty at the laſt Tryal, that Witneſs ought to be look'd upon as perjur'd.

L. C. J. A Witneſs may ſwear true, tho' the Jury don't believe him.

Marſhal. I ground it upon what my Lord *Jones* ſaid at *Coleman*'s Tryal when the Jury were going out, That either they muſt find him guilty, or bring in the two Witneſſes perjur'd.

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Mr. J. *Jones.* There were two poſitive Witneſſes, and nothing to contradict them.

Marſhal. Otes's Teſtimony being found falſe laſt Time, ſhould make him of no Credit now.

One accus'd of Perjury a legal Evidence till the Record of his Conviction is produc'd.

Mr. J. *Dolben.* The Jury are to take no Notice of that, unleſs you bring a Record of his Conviction.

Then the Chief Juſtice having ſumm'd up the Evidence againſt *Marſhal*, *William Ruſſel* was ſet to the Bar.

Otes

Otes was ſworn again.

He depos'd, That *Ruſſel* was a Franciſcan Fryar, and uſed to go by the Name of *Napper*; and that he had heard him ſing Maſs twenty Times, particularly at *Wildhouſe*; that he heard him in *November* 1677, and ſeveral Times laſt Summer was Twelve-Month; and that he had receiv'd the Sacrament from him himſelf. Mr. *Ruſſel*'s Tryal. Page 446.

Prance was ſworn.

He depos'd, That he heard *Ruſſel* ſay Maſs twenty Times in his Habit, and give the Sacrament, and take Confeſſions, particularly at the *Spaniſh* Ambaſſadors at *Wildhouſe* about two or three Years ago.

Sir *William Waller* was ſworn.

He depos'd, That he took *Ruſſel* in his Room, and he found ſeveral Religious Habits among his Cloaths, and he own'd them to be his.

The Priſoner having nothing to ſay to this Evidence, the Chief Juſtice told the Jury, it was a plain Caſe; and *Charles Parris*, alias *Parry*, was ſet to the Bar, and the Jury were charg'd with him.

Otes and *Bedloe* complain'd, the Court was full of Papiſts, who came to take Advantages of what was ſaid: But the Chief Juſtice ſaid, He would not put them out, it ſhould not be ſaid but what they did was openly and fairly. *Otes* and *Bedloe* complain, the Court was crowded with Papiſts.

Otes and *Prance* were ſworn again.

Otes depos'd, That he had heard *Parry* ſay Maſs ſeveral Times, particularly at *Wildhouſe* and at Mr. *Paſton*'s, in the Years 77 and 78, and that he had ſeen him conſecrate the Hoſt, and give the Sacrament. *Parry*'s Tryal.

Parry. What Month of 78, I deſire to know? Page 447.

Otes. I cannot confine myſelf to a Month; but you went by the Name of *Johnſon*, and I am ſure this is the Man.

Parry. I never went by any other Name than *Parry*.

Prance depos'd alſo, That *Parry* went by the Name of *Johnſon*, and that he had heard him ſay Maſs at the *Venetian* Ambaſſador's, and at Mr. *Paſton*'s, and had ſeen him give the Sacrament

about half a Year before the Plot; and he knew him by another Circumſtance, that he brought a Chalice to his Houſe whole, and broke it there, and told the Deponent he muſt not touch it till 'twas broke, and ſo he defac'd it.

Parry. I never did any ſuch Thing, or ever bought or ſold to him any Chalice, nor was I ever in my Life at the *Venetian* Ambaſſador's, or at *Wildhouſe:* And for ſix or ſeven Months before the Plot, which is the Time *Prance* ſpeaks of, I was in the Country.

Prance. I am not certain as to the Time, but it was either about two Years or two Years and a half ago as I believe.

Mr. J. *Pemberton.* He is not poſitive, nor can be in it.

Parry. I have Witneſſes to prove how long I was in the Country before the Plot: Now he only believes it, but before he ſwore it poſitively.

L. C. J. Mr. *Prance*, are you ſure this is the Man?

Prance. Yes, I heard him confeſs he was a Prieſt.

Page 448. *Landſcroon*, a Painter of *Windſor*, was call'd as a Witneſs by the Priſoner.

He depos'd, That Mr. *Parry* was at *Windſor*, and never came to *London* from *Chriſtmas* 77, to *Allhallantide* 78.

Jacob, another Witneſs for the Priſoner, was call'd.

He depos'd, That he went down with Mr. *Parry*, in the Coach, to *Windſor*, about ten Days before *Chriſtmas*, 77, and he ſtaid there a Year for his Health, and they din'd every Day together.

L. C. J. The Teſtimony of Mr. *Otes* goes to *November*, and they ſpeak to the *Chriſtmas* following.

The *Venetian* Ambaſſador's Letter not admitted to be read as Evidence for the Priſoner.

Page 449. *Parry.* My Lord, Mr. *Otes* ſays he heard me ſay Maſs at *Wildhouſe*; here is a Letter of the Ambaſſador's, who, upon the Examination of his Family, teſtifies that I did never officiate in his Family.

L. C. J. That cannot be read: Why do not you bring Witneſſes?

Parry.

Parry. There is but one of the Ambaſſador's Family remaining in *England*, and he is here.

Monſieur *Rivier* appear'd.

Parry. He liv'd in the Houſe, and knows that by his Maſter's Order all his Domeſticks were examin'd, and they proteſted they never knew me or ever ſaw me in *Wildhouſe*, all which I have under the Ambaſſador's Hand and Seal to ſhew.

L. C. J. It ſignifies nothing, here are ſome that have heard you ſay Maſs if he has not.

Then *Rivier* depos'd, That he did not know that ever *Parry* ſaid Maſs at *Wildhouſe*, and that he never ſaw him there.

Mr. J. *Pemberton.* If you aſk a hundred here they wou'd ſay the ſame Thing.

Then the Chief Juſtice ſaid, The Matter was plainly prov'd by two Witneſſes, and if the Jury believ'd them they muſt find him guilty: After which the Chief Juſtice went off the Bench, and *Henry Starkey* was ſet to the Bar, and the Jury were charg'd with him. *Starkey's* Tryal.

Otes was ſworn again.

He depos'd, That he heard Mr. *Starkey* ſay Maſs at Mr. *Paſton's* about three Years ago, and that he ſaw him conſecrate the Hoſt, and receive the Sacrament in both Kinds, and he was in a Prieſt's Habit.

Starkey. What are a Prieſt's Habits, Sir?

Otes. Why he had a Thing on about his Neck and a Surplice, and a Thing about his Arm. He had a Surplice girt about him.

Starkey. I perceive you neither know a Prieſt's Habit, nor the Difference between his Habit and his Ornaments; his Habit is a Caſſock down to the Ground, and a Side Cloak; the Ornaments are not a Surplice, as he ſays, but an Albe that falls to the Ground, and other Things beſides that: And how can he tell that I ſaid Maſs? Does he know that I took Orders; for if I was not in Orders, it was no Maſs; for it is the Prieſt makes the Maſs and not the Maſs the Prieſt.

He ſhews that *Otes* did not know what a Prieſt's Habit was.

Obj. That the Prieſt makes the Maſs, and not the Maſs the Prieſt.

Mr. J. *Pemberton.* That's a pretty Argument, why, do any but Prieſts ſay Maſs?

Starkey.

That a Proteſtant had ſaid Maſs about Town.

Starkey. I knew a Lay Man, a Proteſtant, who ſaid Maſs about this Town, and at laſt he ſtole the Chalice; his Name was *Gardener.*

Page 450.

Mr. *Prance* was ſworn.

He depos'd, That he heard *Starkey* ſay Maſs at the Lady *Somerſet*'s in *Lincoln*'s-*Inn-Fields*, and at Mr. *Duncombe*'s in *Princes Street.*

Starkey. I was never there in all my Life.

Prance. I have heard him ſay he has ſaid Maſs in the King's Army.

Says he had ſpent 4000 l. and loſt a Leg in the King's Service.

Starkey. I never did; but I appear'd for the King when he had not above 500 Men in Appearance for him, and have ſpent above 4000 *l.* in the King's Service, and loſt a Leg by a Cannon Shot, and when I receiv'd my Sentence of Baniſhment, had but three Half Crowns left in the World.

L. C. J. *Baron.* Whatever you have merited by your Service, you had beſt apply your ſelf to the King for his Mercy; but it is nothing to the Point to be try'd before the Jury.

That he was baniſh'd at the Time of the Uſurpation for refuſing to take the Engagement againſt the King.

Starkey. I was baniſh'd into *France* fourteen Years, becauſe I refus'd to take the Engagement never to bear Arms for the King; and I have diſcover'd a Plot againſt the King's Life.

Mr. J. *Pemberton.* We are only to try whether you are a Prieſt or not.

Then the Lord Chief Baron told the Jury there were two Witneſſes againſt the Priſoner, and if they believ'd them, they ought to find him guilty.

Mr. *Lumſden's* Tryal.

Alexander Lumſden was ſet to the Bar, and the Jury charg'd with him, and *Otes*, *Dugdale*, and *Prance* were ſworn again.

Otes depos'd, That *Lumſden* was a Dominican Fryer, and he had heard him ſay Maſs twenty Times at *Wildhouſe*, and ſeen him conſecrate the Hoſt, give the Sacrament, and take Confeſſions, the Summer before the Plot broke out.

He appears to be a *Scotchman*, and Procurator for *Scotland.*

Prance depos'd alſo, That he had heard *Lumſden* ſay Maſs twenty Times, and that he thought he was an *Iriſhman*; but *Otes* ſaid he was a *Scotchman* and Procurator General of the Kingdom of *Scotland*; and *Lumſden* acknowledg'd he was of *Aberdeen* in *Scotland.*

Dugdale depos'd, He heard *Lumsden* confess he was a Priest and a Dominican Fryer.

Lumsden. Here is only bare Assertions and nothing prov'd.

L. C. Baron. Do you think there can be no Proof of your being a Priest, unless the Witnesses saw you receive Orders. Page 458.

Otes. I have heard him own himself a Priest twenty Times.

Lumsden. The exercising the Office of a Priest is but a Penalty of 200 Marks.

The King may prosecute either on the Statute which gives a Forfeiture of 200 Marks for saying Mass, or upon the Statute which makes the taking Orders Treason.

L. C. Baron. Ay, if the King will go no higher; but you are prosecuted on another Statute.

Then the Lord Chief Baron directed the Jury: And told them there was no Necessity they shou'd have Proof of a Priest's Ordination, but when it was prov'd he had exercis'd the Office of Priest, it was sufficient Evidence for them to find him guilty; but that Mr. *Lumsden*'s Case differ'd from the rest, in that he was found to be a *Scotchman*, and the Court were in doubt whether he came within the Statute, for the Words being, *Within the King's Dominions*, they question'd whether they extended to a Native of *Scotland*, which was not under the Dominion of the King of *England* at the making of the Statute; and therefore directed them to find a special Verdict as to him.

The Jury withdrawing, return'd again in about a quarter of an Hour, and brought in the first six Guilty, and as to *Lumsden* they found he was a Priest, and that he was remaining in *England*, as in the Indictment, but that he was born at *Aberdeen* in *Scotland*, and whether he was guilty of High Treason they crav'd the Opinion of the Court.

The six first convicted, but *Lumsden* being a *Scotchman*, it was found specially as to him, the Court doubting whether he was within the Statute. Page 452.

Then the Judges went off the Bench, and left Mr. Recorder to pronounce Sentence, and the Prisoners being all set to the Bar, except *Lumsden*, it was demanded of them respectively what they cou'd say why Judgment of Death shou'd not pass upon them according to Law; and the Prisoners offering nothing in Arrest of Judgment but what they had insisted on at their several Tryals, the Recorder made a Speech to them; wherein he told

Sir *George Jefferies* Recorder. Page 455.

The Recorder shews the Reasonableness of making this Statute, and the putting it in Force at that Time.

told the Prisoners, That neither the Law it self, on which they were convicted, nor the putting it in Execution at this Time, were unreasonable: That the King ought to be acknowledg'd the Supreme Head and Governour in his Dominions, and such Persons as were for transferring their Allegiance to a Foreigner, and giving him a Power to depose the King and dispose of his Dominions, (as every one did who accepted Orders from the See of *Rome*) must be thought to deserve the greatest Punishment: And if Care were not taken of those who profess these Principles, and preach such Doctrine, we shou'd soon see an End of our Government and Religion too: And inasmuch as they were now endeavouring to put these Doctrines in Practice, there cou'd be no Reason alledg'd, but as the Occasion of making the Law was reviv'd, so the Execution of the Law shou'd revive with it.

Sentence pass'd on the first six.

After he had ended his Speech, he pronounc'd Sentence on them as Traytors.

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The TRYAL *of* JOHN TASBOROUGH *and* ANNE PRICE, *for Subornation of Perjury at the King's Bench Bar, the 3d of* February, 32. Car. 2. 1679.

AN Indictment having been found the last Term against the Defendants, they this Day appear'd in Court in Order to their Tryal, and a Jury was sworn, and the Indictment read over to them.

The Indictment for Subornation of Perjury. Page 457.

The Indictment sets forth, That whereas *Thomas Whitebread*, *William Harcourt*, and others, had been indicted for High Treason, in conspiring the Death of the King, *&c.* and were convicted and attainted for the same. And whereas *Richard Langhorn*, Esq; had been likewise convicted and attainted of the same Treasons; and that upon the aforesaid Tryals *Stephen Dugdale* had been examin'd as a Witness for the King, and had depos'd materially against the said Traitors; the

Defendants

Defendants intending to ſtifle the Diſcovery of the ſaid Treaſons, did, before the Tryal of the ſaid *Harcourt*, (*viz.*) the 10th Day of *June* in the 31ſt Year of the King, at the Pariſh of St. *Margaret's Weſtminſter* in the County of *Middleſex*, ſolicit, ſuborn, and endeavour to perſwade the ſaid *Stephen Dugdale* not to be a Witneſs, or to give Evidence upon the ſaid Tryal. And after the Tryal of the ſaid *Harcourt*, *viz.* on the 12th Day of *October*, in the 31ſt Year aforeſaid, at the Pariſh of St. *Margaret's* aforeſaid, the ſaid Defendants did farther ſolicit the ſaid *Dugdale* to retract and deny all the Evidence he had given, and did promiſe him large Sums of Money to induce him to do it: And to accompliſh this, they did perſwade him to withdraw himſelf, and produc'd a Note for him to ſign, importing that he had ſworn falſely againſt the Catholicks, and knowing he had many powerful Enemies, he had withdrawn himſelf to a Place of Safety, in Order to make a full Diſcovery, *&c.* And that to induce him to ſign this Note, they had promis'd him many great Rewards: And this was laid to be done falſely, adviſedly, and corruptly, to the evil Example of others, againſt the Duty of their Allegiance, the King's Peace, *&c.*

The Indictment being read, Mr. *Roger Belwood* and Mr. Serjeant *Maynard* open'd the Charge, and Mr. Attorney General open'd the Evidence.

Page 458. Sir *Cr. Levins*, Attorney General.

Then a Copy of the Record of the Conviction of *Whitebread*, *&c.* was produc'd, and Mr. *Clare* was ſworn, and depos'd, That he examin'd it with Mr. *Adderly*, Clerk of the Peace of *Middleſex*, and that it was a true Copy; and a Copy of *Langhorn's* Conviction was produc'd alſo, and Mr. *Clare* depos'd, That he examin'd it with Mr. *Tanner*, the Clerk of the Peace of *London*, and it was a true Copy. After which

Page 459. Records of the Jeſuits and *Langhorn's* Conviction produc'd in Evidence.

Stephen Dugdale was ſworn.

He depos'd, That the Defendant, Mrs. *Price*, having been a Servant with him in my Lord *Aſton's* Family, he ſent for her, being an old Acquaintance, when he came up to *London* as a Witneſs for the King, and they us'd to converſe much together,

Dugdale's Evidence of Mrs. *Price's* ſoliciting him to retract his Evidence.

together; and that in *June* laſt, the Night before *Harcourt*'s Tryal, ſhe wou'd have perſwaded him not to give Evidence againſt Mr. *Harcourt*, becauſe he was her ghoſtly Father, and that one *Wright* was by and heard her; but the Deponent told her he cou'd not help it, he was to give his Evidence the next Morning, and that he did not ſee her again a pretty while: That afterwards ſhe was reconcil'd to him, and deſir'd the Deponent to ſpeak to the Chief Juſtice in the Behalf of one *Parſons*, to get him bail'd out of the *Gate-Houſe*, but that he went into *Staffordſhire*, where he continu'd about ſix Weeks, and coming to Town again about the 11th of *September*, Mrs. *Price* came to him again, and aſk'd him if he had done any thing in *Parſons*'s Buſineſs: He ſaid, No, but he wou'd go about it immediately; and ſhe reply'd, You need not now, for we have a greater Work in Hand: That ſhe ſaid, ſhe came from a great Perſon, and if he wou'd retract his Evidence and go beyond Sea, [to *Flanders*] he ſhou'd have a thouſand Pounds, paid into a Merchant's Hands to be ſecur'd till he came back, to give Evidence for them, and that he was to take the Plot off from the Catholicks and throw it upon the Proteſtants, and do ſome other conſiderable Services: That the next Time ſhe came to him, he aſk'd her who the great Perſon was ſhe came from, and ſhe ſaid from the Duke of *York*: That the Deponent then went to the Lord *Shaftſbury*, Preſident of the Council, and to Mr. *Hambden*, and acquainted them with it, and they directed him to go on a little farther with her, and endeavour to trepan her, and diſcover the whole Deſign; and accordingly he did give her Encouragement, and got Dr. *Chamberlain* and his Clerk conceal'd in a Place near where they diſcours'd theſe Matters, and when he had plac'd them, he aſk'd Mrs. *Price* who firſt intimated this Matter, and ſhe ſaid that ſhe did, and he did, by the Queſtions he propos'd, make her repeat the Subſtance of all that had paſs'd between them in the Hearing of Dr. *Chamberlain* and his Clerk.

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L. C. J. When did Mr. *Tasborough* first appear in this Matter? Sir *Will. Scroggs.*

Dugdale. He never appear'd but twice, and the first Time I think was about the 12th of *October*, being about the Time the Duke came from *Flanders*, and he said that Mrs. *Price* had acquainted him that I wou'd come over to them; and I gave him some Encouragement to think so; and he said he came there to confirm what Mrs. *Price* had promis'd me, and that he came from the Duke, and what she had promis'd shou'd certainly be made good, and I shou'd have the Duke's Protection; and said, if I did come over to them it was a very charitable Act, and much like a Christian, and if I had done amiss I might have Pardon for it. And he gave me this Encouragement to induce me to come over to them and retract my Evidence, and they produc'd the Note for me to sign, which is mention'd in the Indictment, and Mr. *Tasborough* read it, and said it was nothing but what I might lawfully do: And Mrs. *Price*, upon my Importunity, left the Note with me, and I gave it to Dr. *Chamberlain* to copy: And afterwards I met Mr. *Tasborough* and Mrs. *Price* at the *Cans* in *Holbourn*, and they told me that was the last Time they wou'd meet me, and if I did not sign the Note then, it wou'd be much to my Prejudice, and they shou'd not be able to do any Thing for me unless I sign'd it before the Duke went to *Scotland:* Mrs. *Price* produc'd the Note, and laid it upon the Table at our second Meeting, for I had return'd it to her again before we met; —— I forgot to acquaint the Court that once Mrs. *Price* pretended to go to the Duke at *Windsor* about this Business, and to get me my Pardon, and said that the Duke wou'd protect me, *&c.* and that he directed I shou'd apply my self to the *Spanish* Ambassador, and he wou'd write Letters into *Flanders* for me; but I cou'd never find, tho' they made Use of the Duke of *York*'s Name, that he countenanc'd the Matter, or ever knew of it.

Dugdale's Evidence of *Tasborough*'s tampering with him.

Page 451.

L. C. J. Be-

Page 462. L. C. J. Before you ſaw *Tasborough* Mrs. *Price* talk'd of going down to *Windſor* and getting your Pardon?

Mr. *Dugdale.* Yes, my Lord; for I made ſome Scruple about it, and ſhe ſaid a Man of great Quality ſhou'd engage for the Performance: And they told me, before the Duke wou'd believe me real, I muſt ſubſcribe the Note; and the 1000 *l.* was prepar'd for me, and I ſhou'd go to *Flanders*, and be maintain'd and protected there: But I objecting my Fears of the *Spaniſh* Inquiſition, Mrs. *Price* aſk'd me if I cou'd not be content to be in a Proteſtant Earl's Houſe, and not go beyond Sea.

Mr. *Belwood.* Pray, What Diſcourſe had you with *Tasborough* about Sir *George Wakeman*'s Tryal?

Dugdale. At the ſecond Meeting, ſays Mr. *Taſborough*, What a Progreſs has been made by the acquitting of Sir *George Wakeman*, inſomuch that the Proteſtants themſelves are at a Stand, whether there was a Plot or no, and if you come o-

Page 463. ver to us it will overthrow all: As for *Otes*, *Bedloe*, and *Prance*, they ſaid they cou'd ſoon do their Buſineſs if I wou'd but come over.

Then a Copy of the Note, mention'd in the Indictment, was produc'd, and Dr. *Chamberlain* and *Cleave*, his Clerk, depos'd, that it was a true Copy.

L. C. J. Did you deliver that very Note, that Mrs. *Price* deliver'd you, to Dr. *Chamberlain*?

Dugdale. Yes, I did, and receiv'd it back again.

L. C. J. And you copy'd it?

Cleave. Yes, I did.

Then the Note was read. After which

——— *Wright* was ſworn.

He depos'd, That he heard Mrs. *Price* deſire *Dugdale* to be kind to Father *Harcourt*, and that *Dugdale* afterwards told the Deponent, it was upon account of his Evidence: And that ſometime

Page 464. after, he heard Mrs. *Price* ſay ſhe had been to viſit Father *Harcourt*, who took her in his Arms, and ſaid, do not cry for me, for I die in a good Cauſe. And ſhe ſaid farther, if the King commanded her to be burnt at a Stake, ſhe wou'd ſubmit to it, and ſo wou'd the whole Party:

And

And *Dugdale* answer'd, While you give these kind Expressions, you wou'd cut his Head off: And she reply'd, You are a Rogue, I am satisfy'd; and that she often said, there were not four greater Rogues between this and Hell than the King's Evidence.

L. C. J. Was this before she talk'd of *Harcourt*?

Wright. Yes, a great while.

L. C. J. It is strange she shou'd tamper with him after she had said he was such a great Rogue.

Mr. Solicitor. Who shou'd she tamper with but one she thought a Rogue?

——— *Cross*, the Vintner, sworn.

He depos'd, That Mrs. *Price* came often to his House in *June* and *July* last, and used to send for Mr. *Dugdale*, and that she was at his House also with *Dugdale* after he came out of the Country, and he had heard them discourse concerning *Parsons* and *Harcourt*, but did not know to what the Discourse tended.

Mr. *Chamberlain* was call'd again. Page 465.

He depos'd, That on a *Monday*, the 22d or 23d of *September*, Mr. *Dugdale* having acquainted him there was a Design to take off his Evidence, he came with his Clerk to Mr. *Dugdale*'s Chamber, and both of them being shut up in his Closet, there came a Woman into the Chamber whom Mr. *Dugdale* saluted by the Name of Mrs. *Price*, and they discours'd together; and he heard the Woman tell Mr. *Dugdale*, that the *Spanish* Ambassador was unwilling to treat with him then, because his Interpreter was out of Town, and 'twould be dangerous to make use of another Interpreter, but that the Duke of *York* wou'd protect him and pardon him, and give him a thousand Pounds to maintain him: And *Dugdale* said, You know, Mrs. *Price*, that I began not this Intrigue with you, but you propos'd it to me; and that she own'd she propos'd it to him: And that she press'd Mr. *Dugdale* very much to go with her to the *Gate-House*, and he went; and that the Deponent staid there till he came back.

L. C. J. Did you hear her say what the thousand Pounds was for?

Dr. Only that he was to be gone.

Cleave was call'd again.

He depos'd, That he was in *Dugdale*'s Clóſet with his Maſter, and he heard *Dugdale* aſk the Woman who came in (and he ſaluted by the Name of *Price*) When he ſhou'd go to the *Spaniſh* Ambaſſador's, and ſhe anſwer'd, It was not convenient then, for his Interpreter was out of Town; but Mrs. *Price* added, That if he wou'd come over to the Church of *Rome*, and take off his Evidence, he ſhou'd have 1000*l.* ſecur'd to him; and *Dugdale* demanding how, ſhe ſaid, ſhe wou'd bring him a Perſon of Quality, in a Week's Time, who ſhou'd ſecure and confirm it to him.

Dr. *Chamberlain.* That I heard too.

Cleave. And ſhe ſaid, he ſhou'd have the Duke of *York*'s Protection, and a Pardon not only for his Body but for his Soul: And *Dugdale* replying, What ſignifies my going out of the Way, when there is Dr. *Otes* and others to go on with the Evidence; ſhe ſaid, We do not care ſo much for them, for the Duke's Eye is only upon you.

Mr. J. *Pemberton.* Did you hear that, Dr. *Chamberlain?*

Dr. *Chamberlain.* I heard the Duke named, but do not remember that Particular: She ſeveral times deſir'd him to ſpeak ſoftly, and then Mr. *Dugdale* repeated the Thing over again, that we might underſtand it.

L. C. J. Now prove this Gentlewoman to be the Perſon.

——— *Holmes* was ſworn.

Page 466.

He depos'd, That he went with his Maſter, Dr. *Chamberlain*, to Mr. *Dugdale*'s Lodging on *Monday* the 22d of *September*, and that he ſaw Mrs. *Price* go up, and ſaw her come down again, and the Priſoner was the Woman, he was ſure of it.

Sir *Robert Southwell*, Clerk of the Council, was ſworn.

He depos'd, That when Mrs. *Price* was examin'd before the Council the 23d of *October*, and it was demanded who fram'd the Paper mention'd in the Indictment, ſhe ſaid, ſhe ſtudy'd it her ſelf,

and

and indicted it her self, and one Mrs. *Man* writ it out for her: And Mr. *Tasborough* being likewise examin'd, acknowledg'd he did tell Mr. *Dugdale*, that unless he did sign it, he cou'd not proceed to get him any Favour; for that was to be the Foundation to testify that he was a Man of that Sorrow that he had express'd himself to Mrs. *Price*; and he added, that if *Dugdale* had sign'd the Paper, he wou'd presently have carry'd it to a Magistrate.

The Defendant's Council enter upon his Defence.

Mr. *Sanders*, of Council for Mrs. *Price*, said, it was true, Mr. *Dugdale* and Mrs. *Price* were Fellow-Servants in my Lord *Aston*'s Family, where they contracted a great Familiarity, and, indeed, that Mr. *Dugdale* had promis'd her Marriage, tho' afterwards he thought fit to desert her: That upon his coming to *London* he sent for her again, and they renew'd their Intrigue; and it was very likely that she, being a Papist, wou'd solicit one with whom she had that Familiarity for those of her Party; but he suppos'd *Dugdale* had fram'd this Story of suborning him only to get rid of her, tho' it was a base Thing to serve one so with whom he had contracted Marriage. Page 467.

Mr. J. *Pemberton*. A Man ought to prefer the publick Good to his Mistress.

L. C. J. It is much they shou'd be contracted, when she told him he was a great Rogue.

Mr. *Sanders*. I desire it may be observ'd, that it was after she had told him he was a Rogue that 'tis said she did suborn him.

Mr. J. *Pemberton*. And therefore she thought him fitter for her Purpose.

Mr. *Sanders*. But if she had a Purpose to suborn him, she wou'd not have call'd him Rogue to his Face, that was not the Way to insinuate her self.

Sir *John Nicholas* was sworn.

He depos'd, That *Dugdale* did acknowledge, before the Council, that he had made some Proposals of Marriage to Mrs. *Price*, but nothing of a Contract.

Mrs. *Benwel* was ſworn.

She depos'd, That Mr. *Dugdale* uſed to come to her Houſe, at the *Green Lattice* in *Brownlow Street*, and ſend for Mrs. *Price*; that he had ſent for her twenty Times, and ſhe always came to him if ſhe was at Home: And the laſt Time he ſent for her was the *Sunday* Se'night before ſhe was taken.

Page 468. Another Woman was ſworn.

She depos'd, That Mr. *Dugdale* uſed to ſend for Mrs. *Price* before the Papiſts were baniſh'd by Proclamation out of Town, and then Mrs. *Price* deſir'd the Deponent, if Mr. *Dugdale* came to aſk for her ſhe wou'd not tell him where ſhe was.

Bridget Lee was ſworn.

She depos'd, That a Quarter of a Year before *Harcourt* was try'd, Mr. *Dugdale* came to her and offer'd her five Shillings to tell him where Mrs. *Price* was, but ſhe refus'd.

Mr. J. *Pemberton*. This was before he went out of Town; there had been no tampering then.

Mrs. *Holland* was ſworn.

She depos'd, That Mr. *Dugdale* was in Mrs. *Price*'s Company for two Hours in Lent laſt.

Mr. *Sanders*. We offer this as Evidence that we kept him Company upon another Occaſion, and not with a Deſign to ſuborn him to retract his Evidence.

Mr. J. *Pemberton*. Why did you write your Note then?

Page 469. *Tasborough's* Defence. Mr. *Polexfen*, of Council with Mr. *Tasborough*, ſaid, That notwithſtanding any Evidence that had been given, his Client, Mr. *Tasborough*, might be very innocent; for that it appear'd, that Mrs. *Price* told him that Mr. *Dugdale* was ſorry for what he had ſworn, and wou'd retract his Evidence. And *Dugdale* himſelf ſays that he did ſeem to comply, and treat as if he was yielding.

Mr. J. *Pemberton*. But he tells you that *Tasborough* ſaid that Mrs. *Price* had acquainted him with what Propoſitions ſhe had made of 1000 *l.* and that he was the Man that was to confirm the Promiſes ſhe had made.

L. C. J. If that had not been in the Caſe, perhaps you don't talk much out of the Way; but *Tasborough* tells him, If he will retract his Evidence according to that Note that was produc'd by Mrs. *Price*, and read by him, that he ſhould have 1000 *l.* for his Pains: Can you anſwer that?

Mr. J. *Pemberton.* And why did *Tasborough* uſe the Duke of *York*'s Name, and ſay, he had Authority from him to propoſe theſe Things? This was certainly a very great Wrong to ſo great a Prince. Page 470.

Mr. *Polexfen.* It is ſaid in that Paper, that he ſhould fall under great Diſpleaſure and Danger, and therefore was forc'd to hide, to ſecure himſelf from thoſe he ſhould make his Enemies by it: This was Terror enough, and he muſt live afterwards, and we ſay, what Money ſhe offer'd was to take off his Fears of Want: And we ſay, Mr. *Tasborough* came thither to make good that Part of the Paper which ſays, he muſt be protected and maintain'd. And he might ſay, he had a Subſiſtence and Proviſion for him if he did deſerve it: And there was a great deal of Difference between offering Money to a Man to ſwear a Falſhood and retract a Truth, and offering Money to bring Truth to light and to retract a Falſhood: And to preſerve a Witneſs from periſhing, one may promiſe him Protection and Aſſiſtance.

Witneſs, whether juſtifiable to offer him a Reward, tho' to ſpeak Truth.

L. C. J. A thouſand Pound Reward is too great a Temptation: We do not live in ſo virtuous an Age, but a Man may be tempted by ſuch a Promiſe to retract his Evidence, tho' it was true.

Mr. J. *Pemberton.* By this you let in all manner of Temptations to Witneſſes; we ſhall never know where we are.

L. C. J. Mr. *Dugdale*, did Mr. *Tasborough* ever aſk you if it was true, and you could do it with a ſafe Conſcience?

Dugdale. He never nam'd Truth or Falſhood; it was only to get me over, to retract what I had ſaid.

L. C. J. Did Mr. *Tasborough* talk with you of going away?

Page 471. *Dugdale.* He told me, I had beſt abſent my ſelf beyond Sea for a while, and I ſhould have a convenient Paſſage; and he ſaid, he had acquainted the Duke of *York*, and the Duke had given him Orders to preſs the Note home; for the Duke would not believe me true unleſs I ſign'd the Note.

Mr. *Thomſon*, of Council alſo with Mr. *Tasborough*, urg'd in his Behalf, That he was a Gentleman of a fair Character, and not likely to have been concern'd in ſuch an Affair as Mr. *Dugdale* would repreſent this to be; and ſaid, Mr. *Tasborough* had apply'd himſelf to my Lord Privy-Seal, upon Mrs. *Price*'s giving him this Information, that *Dugdale* might receive the Encouragement that was fitting in this Matter.

Sir *Robert Southwell* appear'd again.

He depos'd, That Mr. *Tasborough* did ſay before the Council, he had been once or twice with the Lord Privy-Seal.

Page 472. Mr. Alderman *Barker* was ſworn.

He depos'd, That he had known Mr. *Tasborough* fourteen or fifteen Years, and he was always look'd upon as an honeſt peaceable Man.

Here Mrs. *Price* deſir'd ſhe might ſpeak for her ſelf; which being permitted, ſhe ſaid, That *Dugdale* importun'd and ſolicited her to go to the Duke of *York*, and promis'd to pay her Coach-hire; and for this ſhe appeal'd to *Dugdale* himſelf; but Mr. J. *Pemberton* told her, ſhe muſt not interrogate him.

A Witneſs ſhall not be ask'd a Queſtion which caſts any Reflection upon him.

Mrs. *Price* added, That *Dugdale* ſolicited her to draw the Note mention'd in the Indictment, and

Page 473. ſhe appeal'd again to *Dugdale*, if he did not tell her he was perjur'd. Then the Court told her, ſhe was an impudent Woman, and muſt have her Mouth ſtopp'd, and would not ſuffer her to ſay any more.

Mr. J. *Jones* ſums up the Evidence, and directs the Jury.

Mr. Serj. *Maynard* having ſumm'd up the Evidence for the King, Mr. J. *Jones* directed the Jury, (the Chief Juſtice being gone off the Bench) and told them, The Familiarity that had been prov'd between *Dugdale* and Mrs. *Price*, was rather an Argument of the tampering than the contrary,

trary, for it was not usual to attempt such Things with Strangers; and he thought both Parts of the Indictment well prov'd as to her, as well the perswading *Dugdale* not to give Evidence against *Harcourt*, as the suborning him to retract his Evidence afterwards. As to *Tasborough*, indeed, he did not appear to be concern'd in the first Part; but in the suborning *Dugdale* to retract his Evidence he was equally guilty with her, for that he did not (as had been suggested) charge *Dugdale* with giving a false Testimony against his Conscience, or urge him to repent, but only advises him to be gone, and retract his Evidence against the Catholicks, and he should have 1000 *l.* for his Reward, and Protection and Pardon. Now, to advise one who had done an Injury to Repentance and a Recantation, might be a very good Thing, but to do it with a Reward of 1000 *l.* could not be justify'd; that tho' this was the usual Way of suborning People, for no Man ever came to another and directly desir'd him to forswear himself; but to tell him of 1000 *l.* Reward, and how he might serve the Catholick Cause, *&c.* were very proper Arguments in this Case to prevail with him, and such as few People in his Circumstances would have resisted; and that tho' Mr. *Tasborough* might have the Character of an honest Man, it was not to be doubted but he had been taught, that in the Service of the Catholick Cause all such Practices would be sanctify'd.

Offering a Witness a Reward to give his Evidence, criminal

Then the Jury laid their Heads together, without going from the Bar, and found both the Defendants guilty of the Trespass and Offence whereof they stood indicted: And they were both committed to the Marshal of the King's-Bench; tho' Mrs. *Price* pray'd she might be remanded to the Gate-House where she was Prisoner before. The Court said, She was now in their Custody, and they should shew her no Favour.

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The Defendants are found Guilty.

Page 476. # The TRYAL of BENJAMIN HARRIS, *Bookſeller, upon an Information exhibited by Mr. Attorney-General, for a Libel reflecting on the King and Government; at* Guildhall, London, *on* Thurſday *the* 5th *of* February, 32 Car. 2. 1679.

Sir Ge. Jefferies. MR. Recorder, in opening the Charge, obſerving the great Concourſe of People, ſaid, He hop'd they came rather to bluſh than to give Encouragement to ſuch Crimes, tho' they liv'd in an Age where all Sorts of Rebellion and Faction were countenanc'd, and Magiſtrates revil'd and ſcandaliz'd, as if People thought themſelves authoriz'd ſo to do; that this Libel was as vile a Piece as ever was contriv'd in Hell, tho' it had a plauſible Title, *viz. An Appeal from the Country to the City, for the Preſervation of his Majeſty's Perſon, Liberty, Property, and the Proteſtant Religion*; but it was ſo far from tending to the Welfare of the Government, that it was deſign'd only to ſtir up Sedition and Rebellion; and the Defendant, as an Aggravation of his Crime, had boaſted, That Thouſands would ſtand by him in it.

The Libel entitled. *An Appeal from the Country to the City, &c.* Page 477.

Sir W. Scroggs. The Lord Chief Juſtice added, That if the Book was not down-right Treaſon, it border'd upon it.

The Evidence of the Defendant's publiſhing it. Then the Witneſſes were call'd, and firſt, Mrs. *Groves*, a Printer's Wife.

She depos'd, That ſhe had half a Dozen of the Books of the Defendant's Man.

Mary Darby was call'd.

She depos'd, That ſhe had four of them.

Mr. *Benj. Took* was ſworn.

He depos'd, That he ſaw ſeveral Quires of thoſe Books in the Defendant's Shop.

The Printer's Man was ſworn.

He depos'd, That they work'd off thoſe Books in the Night, and the Defendant gave him Six-Pence.

The

The Council for the Defendant admitted, That their Client ſold the Book, but ſaid, that he did not do it *maliciouſly*; he ſaw the Book about Town, and bought a Parcel of them, hoping to get ſome Money by them in the Way of his Trade, but had no Intention to ſcandalize the King or Government.

The Defendant call'd two of his Neighbours to his Character, who depos'd, That the Defendant was a quiet peaceable Man, and not uſed to oppoſe or ſpeak diſreſpectfully of the Government.

Then *Robert Stevens* was call'd as a Witneſs for the King, who depos'd, That the Defendant was eſteem'd an Anabaptiſt; and that when he was queſtion'd by the Maſter and Wardens of the *Stationers* Company for ſelling ſuch ſcandalous Things, he anſwer'd, He had ſeveral Thouſands to ſtand by him.

Then the Chief Juſtice ſaid, That altho' the Defendant's Council would not have the Selling ſuch a Book to be ſo great an Offence, it had lately been reſolv'd by all the Judges, That all Perſons who wrote, printed, or ſold any Pamphlet, that was either ſcandalous to publick or private Perſons, ſuch Books might be ſeiz'd, and the Perſons puniſh'd by Law; and that all Perſons expoſing Books reflecting on the Government might be puniſh'd; and farther, that all Writers of News, tho' not ſcandalous, ſeditious, or reflecting on the Government, if they wrote falſe News, they were indictable and puniſhable.

Penal to print or expoſe to Sale a Pamphlet reflecting on the Government or a private Perſon, and ſuch Pamphlets may be ſeiz'd; Perſons who write falſe News puniſhable, tho' it be not ſeditious or ſcandalous.

That as for the Book in Queſtion, it contain'd ſuch baſe Reflections on all Sorts of Perſons, he thought there could not be a worſe, and inſtanc'd in the following Paragraph, (*viz.*) "The greateſt "Danger accruing to your Perſons, as well as to "the whole Kingdom, upon the King's untimely "Death, will proceed from a Confuſion and want "of ſome eminent and intereſted Perſon, whom "you may truſt, to lead you up againſt a *French* "and Popiſh Army: For which Purpoſe, no Per- "ſon is fitter than his Grace the Duke of *Mon-* "*mouth*, as well for Quality, Courage, and Con- "duct, as for that his Life and Fortune depends

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"upon

The Pamphlet proposes the setting up the D. of *Monmouth* for King, after the Death of K. *Charles*.

" upon the same Bottom with yours. He will " stand by you, and therefore you ought to stand " by him, and remember the old Rule, *He who* " *hath the worst Title ever makes the best King*; and " instead of *God and my Right*, his Motto might be " *God and my People.*" That, except the Writer of this Book, there could not be a worse Man than the Defendant, who, for a trivial Profit, neglected the Peace and Quiet of his Country, and would set us altogether by the Ears for the Value of a Groat.

The Jury not permitted to have the Book out with them.

Then the Chief Justice ask'd the Jury, if they doubted in any Point of Law? And one of them ask'd, If they might not have the Book out with them? But the Court answer'd, They could not.

Harris is convicted.

After the Jury had been out a little Time, they return'd, and brought the Defendant in Guilty of selling the Book: The Chief Justice told them, They were to find only Guilty or Not Guilty; then the Foreman said, He was *Guilty*, in which they all concurr'd.

And committed to the *King's-Bench*.

Mr. Recorder then desir'd he might be committed, and thereupon he was deliver'd to a Tipstaff to be carry'd to the *King's-Bench*, tho' the Defendant was very importunate to be carry'd to *Newgate*, or any other Prison.

After the Tryal, the Chief Justice took Notice of the Clamour and Noise that had been made by some factious People, and told them, that he did, in Behalf of the Government, very highly resent it, and if he could find out any of those Shouters, they should not go unpunish'd.

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The TRYAL *of* FRANCIS SMITH, *Bookseller, upon an Information for a Libel, before Mr. Justice* Jones, *at* Guildhall, *the 7th of* February, 32 Car. 2, 1679.

The Information for a Libel reflecting chiefly on my Lord Chief Justice *Scroggs*.

THE Information set forth, That the Defendant, after the Tryal of Sir *George Wakeman*, *Marshal*, *Rumley*, and *Corker*, who were try'd for High-

High-Treaſon the 18th of *July* 1679, before Sir *James Edwards*, Lord-Mayor, the Lord Chief Juſtice *Scroggs*, *&c.* did publiſh a ſcandalous Libel, entitled, *Some Obſervations upon the late Tryal.*

Mr. Recorder ſhew'd, that this Libel was deſign'd principally to reflect on the Lord Chief Juſtice *Scroggs*; and he ſaid, there were a Sort of idle buſy Fellows that would not be pleas'd unleſs every Thing went according to their Fancies; and tho' they would not allow the Pope to be infallible, yet every factious Fellow expected that Tribute ſhould be paid to him, as if he was the only fit Perſon to give Meaſures to Government and Governors: That when Magiſtrates acted according to their Conſciences, and would not be ſteer'd by their Humours, they muſt be look'd upon as Papiſts, or brib'd by ſuch People; and he hoped, when Men ſhould dare to diſparage great Men, who acted by ſupreme Authority, ſome extraordinary Meaſures would be taken to inflict due Puniſhment upon them. —— He ſaid, he ſaw this was a Matter of great Expectation, and he thought, as he was the Mouth of the City of *London*, it was his Duty to ſay, and he dare affirm, notwithſtanding there were ſome factious Spirits, that the Generality of the City of *London*, all good Men, and Men of Abilities, were for the King and the Government as it was then eſtabliſh'd by Law: *At which there was a general Hum.* Then he ſhew'd the Aggravations of the Defendant's Crime, and told the Jury, he hoped they would do Juſtice on ſuch Offenders; and he ſaid, he hoped the greater Part of the Crowd came rather to ſhew their Abhorrence than to countenance ſuch baſe Actions.

Mr. Recorder's Speech.

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As the Witneſſes were about to be ſworn, Mrs. *Smith* came into Court, and ſaid, Her Husband was ſick, or he would have come himſelf, and ſubmitted; whereupon Mr. *Williams*, the Defendant's Council, admitted the Record, and the Jury found the Defendant Guilty. Then Mr. Juſtice *Jones* told Mrs. *Smith*, he would interceed for her Huſband to my Lord Chief Juſtice *Scroggs*, and he did not doubt but his Lordſhip would forgive

The Defendant's Council admit the Record, and he is convicted.

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give him; and Mr. Recorder said, he would contribute what he could to it.

The TRYAL *of* JANE CURTIS, *for publishing the aforesaid Libel reflecting on the Lord Chief Justice* Scroggs, *at* Guildhall, *the same* 17*th of* February.

Mrs. *Curtis*, who publish'd the same Libel, submits, and is convicted.

THE Information being open'd, the Defendant came into Court, and said, She begg'd Pardon if she had done any Thing amiss; and Mr. *Williams*, her Council said, He admitted the Record; whereupon the Jury found her Guilty.

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The TRYAL *of Sir* THOMAS GASCOIGNE, *Bart. for High-Treason, at the* King's-Bench *Bar, on* Friday *the* 11*th of* February, 32 Car. 2. 1679.

Sir *Thomas* is arraign'd.

ON *Saturday* the 24th of *January*, Sir *Thomas Gascoigne* was brought from the *Tower* to the *King's-Bench* Bar, in order to be arraign'd: And Sir *Thomas* being very deaf, the Clerk of the Crown went down to the Bar, and read the Indictment to him.

The Indictment for High-Treason, in conspiring the Death of the King, the Subversion of the Government, Religion, &c.

The Indictment sets forth, That Sir *Thomas Gascoigne*, late of the Parish of *Elmet* in the County of *York*, Bart. as a false Traitor, &c. not weighing the Duty of his Allegiance, &c. on the 30th of *May*, in the 31st Year of the King, at the Parish of *Elmet* aforesaid, did, with other false Traitors, conspire, compass, and imagine the Death of his Majesty, the Subversion of the Government, and to introduce the *Romish* Religion; and for the effecting thereof, the said Sir *Thomas Gascoigne*, Sir *Miles Stapleton*, and the said other false Traitors, did, at the Time and Place aforesaid, assemble themselves, and there resolve to put their said Treasons in Execution. And the better to accom-

accompliſh their ſaid traitorous Imaginations and Purpoſes, they did agree to contribute large Sums of Money to ſeveral of his Majeſty's Subjects unknown, to procure them to kill the King, introduce Popery, and ſubvert the Government; and that the ſaid Sir *Thomas Gaſcoigne*, on the Day and Year aforeſaid, did alſo himſelf ſolicit one *Robert Bolron* to kill the King, and did promiſe him for that Service the Sum of 1000 *l.* All which is laid to be againſt the Duty of his Allegiance, the King's Peace, *&c.*

To which Indictment Sir *Thomas* pleaded Not Guilty. Page 483.

Sir *Thomas* ſaid, He was above fourſcore and five Years old, and deſir'd he might be try'd by a Jury of Quality of his own Country, who knew ſomething how he had liv'd hitherto.

The Lord Chief Juſtice told him, He ſhould have a Jury of Gentlemen of his own Country. Sir *W. Scroggs.*

Then Sir *Thomas* demanded, When he ſhould be brought to his Tryal? And was told, the latter end of the Term; but he ſaid, he could not bring his Witneſſes to Town ſo ſoon.

Mrs. *Ravenſcroft*, Grandaughter to Sir *Thomas*, acquainted the Court, That ſome of his Witneſſes were at *Paris*, and uſed ſome Importunity to have obtain'd a longer Time, but the Court ſaid they could not grant it; and the Lieutenant of the *Tower* had a Rule to bring Sir *Thomas* to the Bar again on *Wedneſday* the 11th of *February*.

On *Wedneſday* the 11th of *February*, Sir *Thomas* being brought to the Bar, Mr. Attorney ſaid, Sir *Thomas* had a Rule for one to aſſiſt him becauſe he was deaf, and he had got three; but Sir *Thomas* alledging, that one of them knew his Witneſſes, the Chief Juſtice permitted two of them to ſtay. Page 484.

Sir *Thomas* is brought upon his Tryal.

The Jury being call'd, Sir *Thomas* was told their Names as they came to the Book, and having challeng'd ſeveral, at length the following Gentlemen were ſworn, *viz.*

Sir *Tho-*

Sir *Thomas Hobſon*, *Richard Beamont*, *Stephen Wilks*, *Fervas Rockley*, *Robert Leek*, *William Batt*, } Eſqs
Charles Beſt, *John Croſſe*, *Barton Allet*, *William Milner*, *John Oxley*, *Francis Oxley*. } Eſqs

The Jury being charg'd with the Priſoner, Mr. *Dormer* open'd the Indictment, and Mr. Serjeant *Maynard* and Mr. Attorney ſhew'd the Nature and Courſe of the Evidence: Then the King's Council call'd their Witneſſes.

Page 485. *Bolron's* Evidence of the Priſoner's making a colluſive Conveyance of his Eſtate, to prevent a Forfeiture.

Robert Bolron and ——— *Mowbray* were ſworn.

Mr. Attorney. Mr. *Bolron*, acquaint the Court with what you know of Sir *Thomas Gaſcoigne*.

Bolron. My Lord, in 1674 I came to live with Sir *Thomas*, as Steward of his Coal-Works, and a little before *Eaſter*, 1675, I (being in the next Room) heard Sir *Thomas* tell Mr. *Charles Inglesby*, that leſt his Eſtate ſhou'd be forfeited to the King, he was reſolv'd to make a colluſive Conveyance thereof; which *Charles Inglesby* approv'd of, and ſaid he wou'd draw the Defeazance himſelf, and order'd Sir *Thomas* to bring none but Proteſtants to witneſs it; and I went afterwards with Sir *Thomas* to Sir *William Inglesby*'s and ſaw him receive 1000 *l.* Conſideration Money colourably, (as

Page 486. I heard him tell *Charles Inglesby*) and I heard the Deed read, and was Witneſs to the Execution of it; 'twas dated the 8th of *April*, 1675, and was for the Conveyance of Sir *Thomas*'s whole Eſtate to Sir *William Inglesby* for ſeven Years, reſerving only (beſides the Conſideration Money) 100 *l.* *per Annum* for Maintenance; and, as I heard him tell Sir *Miles Stapleton* (about the Time of the Plot's being diſcover'd) he did this to ſecure his Eſtate, in Caſe he ſhou'd be diſcover'd that he was in the Deſign of killing the King.

Mr. J. *Jones*. Were you a Proteſtant at that Time?

Bolron. Yes, when the Deed was ſeal'd; and I turn'd Papiſt about the *Whitſontide* after, and

chang'd

chang'd again in *May* or *June*, on Diſcovery of the Plot.

Mr. Serj. *Maynard*. Relate what you know of Sir *Thomas*'s Concern in the Plot.

Bolron. In the Beginning of 1676, as I was coming into the Room, I heard Sir *Thomas* tell one *Chriſtopher Metcalfe*, that he reſolv'd to ſend 3000 *l*. to the Jeſuits in *London* for carrying on the Deſign; and I remember Sir *Thomas* mention'd 300 *l*. for *Corker*, 300 *l*. for *Harcourt*, 300 *l*. for *Cornwallis*, *alias Pracid*, and the reſt by 300 *l*. a Piece, for other Perſons; and ſaid he wou'd return 300 *l*. a Time by *Richard Phyſick* to prevent Suſpicion; and in the Beginning of 1677, I heard him ſay he had return'd it, and that were it a thouſand Times as much, he ſhou'd be glad to ſpend it in ſo good a Cauſe.

Mr. J. *Jones*. Pray, what was the Deſign? Did they ſay any Thing about the Plot?

Bolron. At other Times I have heard them ſay 'twas for killing the King.

L. C. J. Go on with your Evidence.

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Of Sir *Thomas*'s erecting a Nunnery in *Yorkſhire*.

Bolron. In 1677, Sir *Miles Stapleton*, *Charles Inglesby*, 'Squire *Gaſcoigne*, my Lady *Tempeſt*, *Thomas Thwyng*, Sir *Walter Valvaſor*, Sir *Francis Hungat*, *Robert Killingbeck*, and *William Ruſhton*, met at *Barnlow Hall*, (Sir *Thomas Gaſcoigne*'s Seat) and there agreed to fix a Nunnery at *Dolebanck*, if their Deſign of killing the King took Effect, and the Roman Catholick Religion was eſtabliſh'd in *England*, which they likewiſe reſolv'd to venture their Lives and Eſtates to promote; and Sir *Thomas* ſaid he'd ſettle 90 *l*. *per Annum*, for ever, as a Support to the ſaid Nunnery, for which the Company agreed he ſhou'd be canoniz'd after his Deceaſe; and one *Barloe* went with them afterwards to take Poſſeſſion of the Nunnery.

L. C. J. How long did they ſtay there?

Bolron. About ſix or ſeven Hours, during which Time I was in and out of the Room, and heard what I've related.

L. C. J. Well, go on.

Bolron. Sir

Bolron. Sir *Thomas* did accordingly eſtabliſh a Nunnery at *Dolebanck* about 1677, and, as I have heard him ſay, Mrs. *Laſhals* was Lady Abbeſs, Mrs. *Beckwith* and Mrs. *Benningfield* her Aſſiſtants, *Ellen Thwyng*, *Elizabeth Butcher*, and others, were Nuns; and as *Mary Root* took Horſe to go with them, Sir *Thomas* ſaid, there goes an old Maid and a young Nun.

L. C. J. Whereabouts was this Houſe.

Bolron. Near *Ripley*; they were only to continue there till the King was kill'd, and then to reſide at *Heworth*, about half a Mile from *York*, and they did live at *Dolebanck* near a Year and half, till the Diſcovery of the Plot.

Mr. J. *Jones.* How do you know they liv'd there?

Bolron. I have, ſeveral Times, ſeen Letters lie open, ſign'd by *Pracid* and Mrs. *Laſſels*, and dated from *Dolebanck.*

Page 488. Mr. Attorney. What other Place did you hear him mention?

Bolron. Broughton, but I don't know of any being there; ſome came to *Heworth Hall*, but they generally reſided at *Dolebanck*; and Sir *Thomas* ſetled an Eſtate at *Mawton* of 90 *l. per Annum*, which he bought of Mr. *Maleverer*, for the Eſtabliſhment of it.

L. C. J. Well, go on then.

Licenſe for a Papiſt to travel.

Bolron. As I was reading *The Lives of the Saints*, about *March* laſt, in a Window oppoſite to Sir *Thomas*'s, Chamber, I heard Squire *Gaſcoigne* tell Sir *Thomas*, that he had obtain'd a Licenſe from the Juſtices to go to *London* about a Law-Suit then depending betwixt Sir *Thomas* and 'Squire *Nelthorp*, and that Mr. *Middleton* had likewiſe got one, on Pretence of going into the South to receive Rents; but the 'Squire ſaid, as ſoon as he finiſh'd with *Nelthorp*, he wou'd commit the Deſign, in Agitation, into ſuch Hands as wou'd not fail to do it; but wou'd not ſtay to ſee Execution, for he wou'd fly into *France*; and Sir *Thomas* commended the Reſolution; and 'Squire *Gaſcoigne*, becauſe he'd be ſure to be no Sufferer, caus'd

he caus'd all the Stock to be ſold off his Ground, and Mr. *Middleton* ſold his very Houſhold-Goods.

L. C. J. Methinks they ſhou'd be cautious of ſpeaking loud enough to make Sir *Thomas* hear, leſt any of the Servants might likewiſe over-hear them.

Bolron. He was not then ſo deaf as they ſay he is and he now ſeems to be.

Mr. J. *Dolben.* Well, go on then, Sir.

Bolron. My Lord, the 30th of *May* laſt, Sir *Thomas* bid me go into the Gallery next the Prieſt's Lodgings, and there *William Ruſhton*, my Confeſſor, came to me, and on my telling him, in Diſcourſe, that I had taken the Oath of Allegiance at the laſt *Pontfret* Seſſions, he ſaid all were damn'd that kept it, and order'd me to come to him next *Sunday* for Abſolution, for he ſaid he had Power from the Pope to abſolve me, which few other Prieſts had; and I urging 'twas no Sin, for that Mr. *Ellis* (Mr. *Vavaſor*'s Prieſt) had writ Commentaries on the Oath, and juſtify'd the taking it, *Ruſhton* ſaid, he was a Fool and wou'd be check'd for it, and ſaid, the Pope had Power to depoſe the King, and had done it, and told me I ſhou'd merit Heaven if I'd kill him, and he wou'd aſſiſt me in the Act, and quoted that Place in the Scripture, *Thou ſhalt bind their Kings in Fetters, and their Princes in Chains*; and ſaid, unleſs the King wou'd turn Roman Catholick the Pope wou'd give the Kingdom to another; but when I deny'd being concern'd in any ſuch Deed, he bid me conſider of it and come to him again: When I came down, the Servants told me that Sir *Thomas* had left Orders I ſhould not leave the Houſe till he return'd.

The Jeſuits hold it Damnation to take the Oath of Allegiance.

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L. C. J. Did you live with him then?

Bolron. No, my Lord; I left his Service the 1ſt of *July* 1678, and liv'd about a quarter of a Mile from him, and this was in *May* 1679; ſo I ſtay'd till he came in, and he then call'd me into his Chamber, and aſk'd what Diſcourſe I had with *Ruſhton*, which having related, he took me by the Hand, and ſaid, [if thou wilt engage in the Deſign to kill the King, I'll give thee 1000*l.* and

Bolron ſwears the Priſoner offer'd him 1000 l. to kill the King.

ſend thee to my Son *Thomas*,] and told me, if he was not in Town I ſhould have Inſtructions to find the reſt that were concern'd; and when I refus'd being concern'd in ſuch a wicked and bloody Deed, he deſir'd me to keep his Diſcourſe ſecret; but when I had conſider'd it, I went immediately to the Juſtices.

L. C. J. How ſoon, and to whom did you go?

Bolron. Within a Fortnight I went to Mr. *Tindal*, and made Oath that Sir *Thomas* offer'd me 1000 *l.* to kill the King; but he ſaying, that he muſt acquaint the Council, and that it might be a Month before he had an Anſwer, I deſir'd him not to proceed, (leſt, in the mean Time, the Prieſts might eſcape) till I came up to *London* my ſelf.

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L. C. J. What Time came you thither, and to whom did you apply?

Bolron. I think 'twas in *June*, and Mr. *Tindal* gave me a Letter to his Brother to carry me to the Council, which having loſt at *Ware*, I diſcover'd my Buſineſs to the Man that keeps the *Green Dragon* in *Biſhop's-Gate-Street*, who had me to Sir *Robert Clayton*, and Sir *Robert* went to my Lord *Shaftsbury*, and got an Order of Council about me.

L. C. J. Did you leave Sir *Thomas Gaſcoigne*'s Service in good Friendſhip?

Bolron. Yes, my Lord, and was often at the Houſe afterwards; I always went thither to hear Maſs.

L. C. J. Had you any Eſtate when you left his Service?

Bolron. I had a Leaſe *parol* of a Farm for nine Years, which I rented of Sir *Thomas* at 15 *l.* and a Mark *per Annum*, and I have 7 *l. per Annum* of my own; but I had forgot to acquaint your Lorſhip, that in *September* 1678, I heard Sir *Thomas* tell my Lady *Tempeſt*, he would ſend 150 *l.* to *Dolebanck*, in hopes the Blow would be ſhortly given; and *Cornwallis* writ Word he had receiv'd it, but that 'twas too little to carry on ſo great a Deſign, for this was to arm the poor Catholicks when the King was kill'd, and we had no

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Notice,

Notice, at that Time, of the Plot's being discover'd.

Mr. J. *Pemberton*. Acquaint Sir *Thomas* with what he hath said, and see if he will ask him any Questions.

Mr. *Hobart* repeated Part of the Evidence to him, and Sir *Thomas* acknowledg'd he had Money of Sir *William Inglesby*, and seal'd a Deed to Sir *William*, and said, that *Physwick* was his Servant, by whom he had return'd a far greater Sum than 3000 *l.* for the Use of his Sons, Daughters, and other Relations, and said, that for one large Sum of 1000 *l.* Mr. *Hobart* knew how 'twas dispos'd of; he said, likewise, 'twas true that his Son went to *London* with a Design to go into *France*, but he knew not Mr. *Middleton*'s Intent; and affirm'd, that what had been depos'd, in Relation to the Meeting at *Barnlow*, the Establishment of a Nunnery, and the Design to kill the King, was utterly false, for that he had never heard of it before.

Then Mr. *Hobart* repeated to him the Discourse betwixt *Rushton* and *Bolron*, and Sir *Thomas*'s Offer of 1000 *l.* and Sir *Thomas* said, *Bolron* might talk with another for ought he knew, but deny'd there was any such Offer by him; and ask'd *Bolron*, if he ever knew him have 200 *l.* together. Page 492.

Bolron. I have seen 500 *l.* at a Time in the House, and have seen 700 *l.* in *Physwick*'s Hands. My Lord, his Estate was then, at least, 1200 *l.* *per Annum*, tho', I believe, he has settled about 600 *l.* *per Annum* on his Son; which being repeated to Sir *Thomas*, he said, he wish'd *Bolron* would make it good; and said, there was not one Word of Truth in all *Bolron*'s Accusation.

Mr. Attorney. Then pray, Mr. *Mowbray*, tell your Knowledge.

Mowbray's Evidence of Sir *Thomas*'s Concern in the Plot.

Mowbray. My Lord, I shall first speak as to the Plot in general, and then to Sir *Thomas Gascoigne* in particular. I came to wait on Sir *Thomas* in his Chamber (tho' not as an hir'd Servant) in the Beginning of 1674, and continu'd with him till 76, during which Time, Mr. *Adam-*

ſon, *Fincham*, *Stapleton*, and *Killingbeck*, all Prieſts, and the two *Thwyngs*, uſed to viſit and confer with Mr. *Ruſhton*; and I, being diligent in attending Sir *Thomas* at the Altar, was much in his Favour, and permitted to be in his Chamber when the Prieſts were in private with him, and often heard them talk of a Deſign to advance the Popiſh Religion, and that 'twas like to be ſpeedily effected, in Regard moſt of the conſiderable Papiſts were engag'd in it; and they ſaid, if fair Means cou'd not do it Force muſt be uſed, and particularly, that *London* and *York* were to be fir'd; they ſaid likewiſe, that the King had promis'd the Jeſuits abroad to eſtabliſh their Religion when he was reſtor'd, which they deſpair'd of, and he was therefore adjudg'd an Heretick, and to be kill'd; and *Ruſhton* declar'd, he had given the Oath of Secrecy and the Sacrament to Sir *Thomas*, 'Squire *Gaſcoigne*, my Lady *Tempeſt*, and Mr. *Stephen Tempeſt*, and that they had engag'd to be faithful and ſecret, and to be active therein to the utmoſt of their Powers.

L. C. J. Were you a Papiſt then?

Mowbray. Yes, my Lord: About *Michaelmas* 76, there was another Meeting of Prieſts, and others, where they declar'd the King was an Heretick, and that the Pope had excommunicated him and all other Hereticks of the three Nations, and that Force muſt be uſed; and then *Ruſhton* produc'd a Liſt of four or five hundred Names, which he read over, among which were Sir *Thomas Gaſcoigne*, 'Squire *Gaſcoigne*, my Lady *Tempeſt*, Mr. *Vavaſor*, Mr. *Francis Hungat*, Sir *J. Savil*, the two *Townleys*, Mr. *Sherborne*, and others; I ſaw Sir *Thomas*'s Name, and do believe, on my Oath, it was his Hand: The Title of it was, *A Liſt of them that are engag'd in the Deſign of killing the King, and promoting the Catholick Religion.*

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L. C. J. Was it mention'd, in the Liſt, for killing the King?

Mowbray. Yes, my Lord; and they ſaid the Pope had given a Commiſſion to execute the Deſign, and had alſo given a plenary Indulgence of 10000 Years to all thoſe who ſhould either act or contribute

contribute thereto, beſides a Pardon and other Gratifications. Now, my Lord, concerning Sir *Thomas*; There was he, his Son, my Lady *Tempeſt*, and Mr. *Ruſhton*, diſcourſing together, about *Michaelmas* 76, of killing the King and firing the two Cities; and Sir *Thomas* aſſur'd *Ruſhton* that he wou'd obſerve the Oath of Secrecy, and contribute, to the utmoſt of his Power, to promote the Deſign; and they did unanimouſly agree, that 'twas a meritorious Undertaking, and ſaid, they would venture their Lives and Fortunes in it.

L. C. J. Were you in the Room?

Mowbray. I ſtood cloſe at the Door, and overheard them, and Dr. *Stapleton* coming in, inform'd them of my being there, on which my Lady *Tempeſt* call'd, and order'd me to go and entertain ſome Strangers below.

Then Mr. *Hobart* repeated the Evidence to Sir *Thomas*, and when he came to mention the Oath of Secrecy, Sir *Thomas* reply'd, He hath gotten this out of the News-Books, for I never heard of it before; and added, There's not a Word of Truth come out of his Mouth: Why didn't he diſcover it before? Page 494.

Mowbray. My Lord, Mr. *Addiſon* flatter'd me, and perſwaded me to continue a Papiſt, leſt I ſhould diſcover it; and after the Plot came out, and I had turn'd Proteſtant, and taken the Oaths of Allegiance and Supremacy, he threaten'd to take my Life if I diſcover'd it; beſides, my Lord, I had no Friends, and my Circumſtances wou'd not permit me to come to *London* to do it.

L. C. J. I wonder they did not give you the the Oath of Secrecy.

Mowbray. I took it in 76; Mr. *Ruſhton* reſerv'd the Sacrament for me, and ſwore me, upon it, to be faithful and ſecret, and that I ſhould not reveal thoſe Diſcourſes I was privy to. *Mowbray* confeſſes he had taken the Oath of Secrecy, and the Sacrament upon it.

Mr. Serj. *Maynard.* Sir *Thomas* ſays, he was never Maſter of 200 *l.* together; we will now produce his Almanack.

The Almanack was produc'd, and ſhewn to Sir *Thomas*, who acknowledg'd the Writing to be his Hand.

Mr. Attorney. Here is, The 15th to *Peter*, for 100 *l.* to *Corker*: I desire to know what that was for?

Sir *Thomas Gascoigne*. For Part of *Mary Appleby*'s Portion; I think, I return'd it to *Corker*, because I did not know in what Part of *Paris* she liv'd.

Mr. Attorney. Here's another Book mentions 900 *l.* to Mr. *Corker*, upon Agreement between them.

Sir *Thomas Gascoigne*. We have been several Years returning Money; I was to pay 100 *l. per Annum* to *Mary Appleby*, and several Sums to others, as the Rents came in; it may be 2000 *l.* from first to last.

Mr. Attorney. Why was 900 *l.* paid to *Corker*, as here mention'd, between *July* 77, and *June* 78?

Sir *Thomas Gascoigne* look'd in the Almanack, and said, 'twas a great many Years, and at several Times.

Page 495. Mr. Attorney. 'Tis otherwise in the Book. Then here's another Passage, [Take *Heworth*, at an easy Rent, of the Widow, and purchase the Reversion of *Craddock*, and, in the Interim, *Dawson*.]

Sir *Thomas Gascoigne*. My Niece, *Thwyng*, was born in the House, and had a Mind to live in't, and this was a Memorandum to assist my Brother's poor Children, whom I assisted with Money; the Widow was Sir *Walter Vavasor*'s Sister, who was to sell the House, and *Craddock* meant to sell all the Lordship, but the Children bought the House and one Close, and the rest was sold otherwise; I have forgot what *Dawson*'s put down for.

Mr. Attorney. Ask him if Mrs. *Thwyng* was a single Woman, and to have the whole House to her self.

Sir *Thomas Gascoigne*. She had her Brother with her, and they desir'd some other House if they could not get that.

Mr. *Hobart*. *Bolron* says Mrs. *Thwyng* was a Nun, Mrs. *Lassels* was to be Lady Abbess, *&c.*

Sir *Thomas Gascoigne*. I know nothing of it.

Mr. Attorney. Then here is, [Memorandum, acquaint Mr. *Thomas Thwyng* with the whole Design.]

ſign.] This *Thwyng* is a Prieſt in *Newgate* at this Time.

Sir *Thomas Gaſcoigne*. 'Twas my providing Money for *Ferdinando Thwyng*, that's now dead, and his Siſter, to purchaſe the Houſe.

Mr. Attorney. No, but this is *Thomas Thwyng*.

L. C. J. Then it's likely that a Houſe was to be purchas'd for a Nun and a Prieſt for ſome ſuch Buſineſs as is ſworn.

Mr. *Hobart*. He ſays no, my Lord, 'twas the Brothers and Siſters that liv'd next Door to him, and he might acquaint *Thomas Thwyng* with ſuch his Intention.

Mr. Attorney. We'll now produce a Letter taken amongſt his Papers, with a Mark of Sir *Thomas*'s own Hand to it. Then a Letter was read, ſubſcrib'd, *Jo. Pracid*, and directed to Sir *Thomas*, dated, *Dolebanck*, *June* the 9th, 1678. It contain'd moſt grateful Acknowledgments for all charitable Favours; tells him his Niece and Mrs. *Haſtings* deſire to ſee him at *Dolebanck*, and that the Writer had ſent a Paper ſafe to Mrs. *Beddingfield*, and inform'd her of Sir *Thomas*'s Deſign to have this Proviſo inſerted in the Writing, *viz.* [That if *England* be converted, then the whole 90 *l. per Annum* is to be apply'd here in *Yorkſhire*, about, or at, *Heworth*, *&c.*] which would be for the Glory of God, *&c.* and that the good Religious there were deſirous to remove to Mr. *Dawſon*'s, becauſe the Houſe there wou'd not receive more Scholars, and had other Inconveniencies; and again, deſir'd to ſee him, *&c.*

Page 496. A Letter, directed to Sir *Thomas*, and found among his Papers, produc'd as Evidence.

L. C. J. It's pretty plain there was a Nunnery deſign'd.

Mr. Recorder. We have another Letter, dated the 24th of *May* laſt, from *York Caſtle*, from the ſame *Pracid*, I ſuppoſe, and the Time of receiving it endors'd on the Back-ſide by Sir *Thomas* himſelf; which Letter was alſo read.

The firſt Part of the Letter gives an Account of the Health and Circumſtances of four or five Women-Priſoners of Sir *Thomas*'s Acquaintance, and then declares, that his Superior at *London* had inform'd him, [that the pretended Oath of

Page 497.

Allegiance, the Oath, Damnation to take it.

Allegiance cou'd not be taken as it was worded; for that three Briefs had been ſent from the Pope, expreſly forbidding it, and that the laſt declar'd it damnable to take it.] It mention'd likewiſe, that the *Sorbon* Doctors were againſt it, and ſays, that whoever in *England* gave Leave, deceiv'd People, and acted contrary to the Catholick Church; and that all the Superiors, both ſecular and regular, had agreed it could not be taken, and that Mr. *Hutchinſon*, alias *Berry*, who writ in Defence of it, was turn'd Proteſtant, *&c.*

Mr. J. *Dolben.* This *Pracid*, I ſuppoſe, was the Occaſion ſo many Gentlemen refus'd the Oath of Allegiance: I convicted above forty of them in that County for not taking it.

Forty Papiſts convicted of not taking the Oath of Allegiance in *Yorkſhire.*

Mr. Attorney. Now, Sir, we ſhall prove he has return'd great Sums of Money, becauſe he has ſaid, he never had 200 *l.* together.

Mr. *Phiſwick* ſworn.

Phiſwick depos'd, That he was Servant to Sir *Thomas* above ſix Years, and had, in that Time, return'd (as appear'd by a Particular he produc'd) 6128 *l.* but ſaid, Part of it was for Sir *Thomas*, Part for his Son, and Part for my Lady *Tempeſt*, and that he cou'd not give a more particular Account unleſs he had his Almanack.

Mr. J. *Dolben.* What Eſtate had his Son to live on?

Phiſwick. Betwixt 4 and 500 *l. per Annum*, my Lady *Tempeſt* had 300 *l.* and Sir *Thomas*, I believe, 1600 *l. per Annum.*

L. C. J. Tell him they have done with the Evidence againſt him, and if he has any Witneſſes he muſt call them.

Mr. *Babbington* call'd.

Sir *Thomas.* I deſire he'll acquaint the Court with the Difference betwixt Mr. *Bolron* and me.

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The Priſoner calls Witneſſes to ſhew *Bolron's* Malice againſt him.

Babbington. My Lord, laſt Spring Sir *Thomas* gave me Orders to ſue Mr. *Bolron* on two Bonds, one for 28 *l.* the other 20 *l.* which Mr. *Bolron* underſtanding, offer'd a Conveyance of a Houſe at *Newcaſtle*, which Sir *Thomas* was unwilling to accept; but on my acquainting him that the Debt was deſperate, and that he need not take this as a Satisfaction,

Satisfaction, but only as an additional Security, he conſented I ſhould draw a Deed for that Purpoſe, and *Bolron* gave me a Letter under his own Hand for the doing it; Sir *Thomas* alſo gave me Directions to deliver Declarations of Ejectment, in Order to turn *Bolron* out of the Farm he hir'd of him, becauſe he did not pay his Rent.

L. C. J. What Time was this?

Babbington. The Diſcourſe was in *May*, but the Direction for drawing the Deed was in *June*, and a Day was appointed a little before *Whitſontide* for Sealing the Deeds; *Bolron* himſelf was willing to do it, but his Wife wou'd not, unleſs Sir *Thomas* wou'd deliver up the two Bonds, which he refus'd, and the Deed was not ſeal'd.

L. C. J. Are you a Proteſtant?

Babbington. Yes, my Lord, and always was.

Mr. Attorney. Yes, I know him very well; he is an Attorney at large.

Babbington. The latter End of *June*, *Bolron* ſent for me, I came over, and went with him to Sir *Thomas*'s, and *Bolron* telling him he had a Chapman for his Houſes, who wou'd lay down the Money in two or three Days, Sir *Thomas* was ſatisfy'd, but chid *Bolron* for his Negligence in managing his Coal-Pits. After we came away, *Bolron* aſk'd if Sir *Thomas* deſign'd to ſue him on the Bonds, I told him, I had Orders to do it if the Money was not paid; and he then aſk'd if he would turn him out of the Farm, I ſaid, yes, unleſs he paid his Rent; and he then deny'd he had receiv'd a Declaration of Ejectment, tho' my Man afterwards made Affidavit of the delivering it, and I had Judgment thereon; but on my telling him Sir *Thomas* deſign'd it, *Well*, (ſaid he) *then, by God, I will do that which I did not intend to do.* Page 499.

Mr. J. *Jones.* Did you tell this to Sir *Thomas Gaſcoigne?*

Babbing. No, my Lord; I look'd upon it as an idle Expreſſion, but *Moor*, who was bound for him, told me that *Bolron*, to encourage him to be bound with him, ſaid, if Sir *Thomas* ſued him, he would inform that he kept Prieſts in his Houſe.

Then

Then *Obadiah Moor* was call'd.

Moor. Mr. *Bolron* desiring me to be bound with him to Sir *Thomas Gascoigne*, told me his Brother *Baker* and *Stephen Thompson* would be bound with us, and that I need not fear Trouble, for if Sir *Thomas* sued him he wou'd inform that he kept Priests; so I became bound: The one Bond was payable at *Candlemas* last, the other in *August*, and after *Candlemas*, *Bolron* not paying the Money, I desir'd Mr. *Babbington* to take out a Writ against him, but he cou'd not be found. Presently after, he came and gave Information at *London*, and on the 8th of *August* last I met him at *Ferry-Bridge*, and he said, You and I have often discours'd of Sir *Thomas Gascoigne*, you may do me Good; if you do not, pray do me no Harm. I then ask'd him if Sir *Thomas* was in the Plot, for, said I, you have often told me he was as innocent of it as the Child that's unborn; he said, he was then a Papist, and did but equivocate, and if he had told a thousand Lies and kill'd twenty Protestants, their Priest would have forgiven him; and then pull'd out 10 *s.* and said, 'tis all the Money I have, pray do me no Harm, for you know I have all along deny'd it.

Mr. J. *Jones.* What, are you a Protestant or a Papist?

Moor. Born and bred a Protestant.

Stephen Thompson was call'd.

Mr. J. *Dolben.* Well, what do you know of this Business?

Thompson. Mr. *Bolron* was Steward of Sir *Thomas Gascoigne's* Colliery, and Sir *Thomas*, not liking his Accompts, turn'd him out; and there being a great deal of Money due to Sir *Thomas*, *Bolron* desir'd me to be bound with him for it, and told me there were several Debts which he had not accompted for, and he said he would gather them in and discharge the Debt; and I enter'd into Bonds of 60 *l.* for Payment of 28 at *Candlemas*; and *Bolron*, about that Time, selling off many of his Goods, I enquir'd how I shou'd be secur'd, and he bidding me not to fear, I ask'd him if Sir *Thomas* was concern'd in the Plot, he

Page 500.

said

faid he was Sinlefs of it. Some Time after I went with him to Sir *Thomas*, to defire three Weeks Time for Payment, and Sir *Thomas* would give but a Fortnight; and after we came from him, *Bolron* faid, if he do fue me I'll do him an ill Turn; and foon after he went to *London*. When he return'd, and had taken Sir *Thomas*, I afk'd him what he defign'd to do, and he anfwer'd, don't fear, I am to receive 30*l*. on the King's Account, but another bids 60*l*. and I know what *Otes* and *Bedloe* had, and won't bate a Farthing.

Then *William Backhouſe* was call'd.

Sir *Thomas*. I defire he'll acquaint the Court of the Threats *Bolron* ufed to his Wife to oblige her to fwear againft her Confcience, and his faying that he was promis'd he fhou'd get 500*l*. by it.

Backhouſe. On the 7th of *July* laft, I ferv'd a Warrant on Sir *Thomas*, and was order'd to bring the Witneffes before the Juftices. Mrs. *Bolron* was then ſick, and faid, fhe knew nothing againft Sir *Thomas*; but *Bolron* faid fhe muft go, or he would have her drawn at the Cart's Arfe.

——— *Hamſworth* was next call'd.

She depos'd, That when *Bolron* told his Wife fhe muft go fwear againft Sir *Thomas*, fhe cry'd, and refus'd to go; and on *Bolron*'s threatning to tie her to the Horfe's Tail, fhe faid, fhe knew of no Misdemeanor in Sir *Thomas*, touching his ſacred Majefty, or the Church Government.

Nicholas Shippon was next call'd.

Sir *Thomas*. I defire he'll tell what Difcourfe he had with *Bolron* the Day after the Race.

Shippon. *Bolron* came to my Houfe the 30th of *May* laft, to defire my Boy to carry a Letter for him, and ſtaid all the Afternoon, being afraid to ſtir about for fear of the Bailiffs. Page 501.

Bolron. It's all falfe, my Lord, I was moft of that Afternoon at Sir *Thomas*'s, where they were marking Sheep.

Then *Roger Gregſon* was call'd.

Sir *Thomas*. What did *Bolron* ſay to you about *Auguſt* laft?

Gregſon. I met *Robert Bolron* about *Auguſt*, after he came from *London*, and aſk'd him how Sir

Thomas

Thomas did, and how he'd come off about the Plot (as they call it); he ſaid, Sir *Thomas* was well, and might come off well enough, but 'twould coſt him much Money; I then aſk'd him how they differ'd, he ſaid, that Rogue, *Addiſon*, the Prieſt's Brother, was the Cauſe, who had call'd him to Account, or elſe he had not done it, and I believe that was the Reaſon; and after he was rode from me he return'd, and ſaid, the King had like to have been ſtabb'd by one of the Privy Council, but the King made his Eſcape, and that now they wou'd the ſooner believe his Information.

Mr. J. *Jones.* What are you, a Papiſt?

Gregſon. No, I am no Papiſt, nor ever was, I deny it.

Whether an Accomplice in the ſame Treaſon may be a Witneſs for the Priſoner, before he is committed or indicted.

James Barlowe was call'd.

Mr. Serj. *Maynard* objected that he was accus'd of the ſame Crime, and Mr. Solicitor ſaid *Bolron* had ſworn his being at the Conſultation; but Mr. Juſtice *Dolben* ſaid, as there was nothing on Record againſt him, they cou'd not refuſe to hear him, and the Jury might believe as they pleas'd. [Here Mr. *Hobart* aſking why they did not indict him, he was check'd by the Court for being pragmatical, and told, that tho' he was to aſſiſt Sir *Thomas* in his Defect of hearing, he was not to manage as a Council, and was aſk'd if he writ Sir *Thomas*'s Brief, which he deny'd.]

Then Mr. *Ravenſcroft* offer'd to tell what *Barlowe* had declar'd to him.

Mr. J. *Dolben.* Mr. *Ravenſcroft*, if your Diſcourſe be relating to this Buſineſs, that *Mowbray* bears Sir *Thomas* Ill-will for turning him off, or the like, you may ſpeak; but if it be only a Story of another's Knowledge, it's of no Effect.

Page 502. Mr. *Ravenſcroft.* About nine a-Clock laſt Night *Barlowe* came to me: Says he, Mr. *Ravenſcroft*, ——

Mr. J. *Dolben.* Come, don't tell us the Preamble, but the Story.

Mr. *Ravenſcroft.* He told me that *Mowbray*, a little before his going from Sir *Thomas*, combin'd with, or rather ſeduc'd him, to rob Sir *Thomas* of a great Sum of Money, which he deſign'd to conceal,

conceal, but now finding Sir *Thomas*'s Life depending on the Credit of *Mowbray*'s Teſtimony, he thought himſelf oblig'd to tell the Truth.

Mr. J. *Dolben*. He makes himſelf a Rogue by combining, and you have made him a Knave by his Confeſſion; he is not a competent Witneſs againſt the Credit of the other.

Then *George Dixon* appear'd.

Dixon. I was at *William Batley's* laſt *Auguſt*, and Mr. *Bolron* and Mr. *Mowbray* came thither to drink, and in an upper Room they fell into Diſcourſe about Sir *Thomas Gaſcoigne* and my Lady *Tempeſt*, I being with *Batley* at the Bottom of the Stairs, heard *Mowbray* ſay Sir *Thomas* is a very honeſt Man, for ought I know, but I would hang my Lady *Tempeſt* if I knew any Thing to do it; and after ſome Conſultation, they agreed to meet at *Bolron*'s Houſe to conclude what to do againſt them, and ſaid they ſhould be well rewarded for it.

Bolron. I neither know the Man, nor ever held ſuch Diſcourſe.

Mowbray. Nor I; neither have I drank at that Houſe by the Old Church at *Leeds* theſe two Years.

William Batley was call'd.

Batley. My Lord, I live by the Old Church at *Leeds*, and Mr. *Bolron* and Mr. *Mowbray* coming thither, I fill'd a Pot of Ale and carry'd it up Stairs and left them; but hearing them talk of a Plot, I ſtopp'd, and heard *Bolron* ſay, Sir *Thomas Gaſcoigne* has been very ſevere againſt us both, and now we have a Way to be reveng'd; *Mowbray* ſaid, he thought Sir *Thomas* an honeſt Man, but if he knew any Thing to hang my Lady *Tempeſt* he wou'd diſcover it; and *Bolron* reply'd, But Sir *Thomas* troubles me, and if I don't make out ſomething againſt him (which muſt be by two Witneſſes) he'll ruin me; then *Mowbray* aſk'd how they ſhou'd effect it, and *Bolron* anſwer'd, If thou'lt come to my Houſe I'll put thee in a Way, and we ſhall be well rewarded; and *Mowbray* fix'd a Day to go to him: *Dixon* was with me and heard it all.

Page 503. Farther Evidence of *Bolron* and *Mowbray*'s Malice againſt the Priſoner.

Mr. J. *Dol-*

Mr. J. *Dolben.* He does not ſay half ſo much. Were you in the Room?

Batley. No, I was on the Stairs Head, and the Door was left open.

Mr. J. *Pemberton.* Did you ſay any Thing to them about this?

Batley. No, but I told it to one *Loftus*, a Smith; and I ſuppoſe Mr. *Babbington* heard of it.

Babbington. 'Twas the common Diſcourſe of *Leeds*; I was firſt told it by one *Johnſon*, and afterwards, in *October*, the Bailiff of *Leeds* told me of it.

Bolron. I was not at *Leeds* in *Auguſt*, and except the firſt Part of the Month, I was in *Northumberland* and *Durham* ſearching for Prieſts.

Then Mrs. *Jefferſon* was call'd.

Mr. J. *Jones.* Come, Miſtreſs, what do you know?

Mrs. *Jefferſon.* I heard Mr. *Mowbray* ſay, in *Auguſt* laſt, that Sir *Thomas* was a very honeſt Gentleman, that he knew nothing againſt him, and believ'd he was wrongfully accus'd.

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Matthias Higgringil was next call'd.

Mr. J. *Dolben.* What can you ſay to this Buſineſs about Sir *Thomas Gaſcoigne?*

Higgringil. The 25th of *September* laſt I was at an Ale-Houſe with Mr. *Mowbray* and Mr. *Legat*, and they were conſulting together how to diſgrace Sir *Thomas*, and take away his Life; and *Mowbray* call'd me out, and ſaid, Sir *Thomas* and my Lady *Tempeſt* have done all they could to diſgrace me, (I ſuppoſe he meant their giving out they ſuſpected he had robb'd them, which became the Country Talk) and now, ſaid he, I ſhall match them: I'll requite them.

Then *Francis Johnſon* appear'd.

Mr. J. *Dolben.* Well, come, what do you know?

Johnſon. The firſt Month Mr. *Bolron* came into Sir *Thomas*'s Service, I know he loſt 3 *l.* by him, for I caſt up the Accompt my ſelf.

Bolron. My Lord, I don't deny I loſt 3 *l.* and Sir *Thomas* forgave it me.

Mr. *Pebles*, Clerk of the Peace for the County of *York*, was call'd.

Sir *Thomas.* I desire you'll speak what you know of Mr. *Bolron*'s Carriage?

Pebles. Mr. *Bolron* came into my Company last Assizes at *York*, and I not knowing him, he said he was Prosecutor against Sir *Thomas Gascoigne*, and ask'd me whether 'twere fit to pay Money to a Man that was indicted as a Traitor? I told him he might before Conviction. A little after, he told me he was abus'd by the Judges who came the Circuit, for they slighted him, and sent their Servants (when he went to speak with them) to know what he wou'd say to them, but said he had writ them his Mind, on which I left him, but he follow'd me, and said, he cou'd do me a Prejudice but wou'd not. I said, I shou'd not court his Favour, and went away; he then follow'd me into the Street, and ask'd if I wou'd help apprehend a Traitor, and shew'd me a Woman, and said she was greatly concern'd in the Plot, and was to be the first Lady Mayoress of *York* after the King was kill'd, but seeing he did not lay hold of her I left her: Some time after he procur'd a Warrant from the Council against me, and brought it to a Justice of Peace, and at the next Meeting of the Justices the Business was examin'd, where *Bolron* pretended he had Witnesses to prove that I took Money to keep a Man from taking the Oath of Allegiance; and one Witness was produc'd, who depos'd, that he never gave me Money, and that he had taken the Oath; then he pretended Mr. *Dunford*, an Attorney, could prove something against me, but he living fourteen Miles off, a Hearing was appointed the *Monday* following, and Notice given to *Dunford*, who then depos'd, he knew nothing of it, nor ever gave me Money on such Account; and I was discharg'd.

Evidence of Bolron's swearing against others. Page 505.

Mr. J. *Dolben.* Is that all you know?

Pebles. That's all in particular, my Lord; but his Reputation, in general, is but indifferent among the Grand Jury and Gentlemen of the Country; most People speak ill of him.

Bolron's Character.

Then

Then *Hardwick* was call'd.

He depos'd, That when *Bolron*'s Wife, Brother, and Sister, were to be carry'd before the Justice to give Evidence against Sir *Thomas Gascoigne*, that they begg'd to be excus'd, and refus'd to go, and *Bolron* told them they must go.

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William Clow was call'd.

Mr. J. *Dolben*. Come, what say you?

Clow. I arrested *Bolron* at the Suit of *Higgringil*, and *Bolron* said he would make Sir *Thomas* pay the Debt, or he would play him such a Trick as he little dream'd of.

Then Mr. *Hobart* stood up.

Mr. J. *Pemberton*. Pray, speak what you know of your own Knowledge.

Hobart. I know the Payment of most Part of the Money that has been mention'd to be return'd by Sir *Thomas*, 1800 *l*. of it was paid to Mr. *Trumbal* at Mr. *Mawson*'s, about that Purchase, 200 *l*. to a Client of mine, 80 *l*. to the Widow *Cawson*, on Bond, and above 300 *l*. to *Corker*, in six Years Time.

Mr. J. *Pemberton*. Nay, in four Years Time.

Hobart. This 300 and 300 before I drew the Receipts for; and Sir *Thomas* order'd me, when Mr. *Corker* came for it, I should have a Receipt from Mrs. *Mary Appleby*, to whom Sir *Thomas* was Guardian, and it came back sign'd by her; she had 100 *l*. *per Annum*, and sometimes 200 *l*. return'd her.

Mr. J. *Dolben*. How came she to have 900 *l*. paid her in four Years Time?

Hobart. In a Suit depending betwixt Sir *Thomas* and Mr. *Appleby*, her Father, my Lord Keeper *Bridgman* order'd that 100 *l*. *per Annum* (for each of the two Daughters) shou'd be paid to Sir *Thomas* out of the Rents arising in *Yorkshire*; and during the Suit there was three or four Years Arrear; and Sir *Thomas* being press'd for the Money by Mrs. *Appleby*, who was beyond Sea, Sir *Thomas* sent to *Corker* to get the Money return'd to her.

Then a Woman appear'd.

Sir *Thomas*. What do you know of *Mowbray*'s being suspected of Theft at my House?

Witness.

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Witneſs. He offer'd me 5 *l.* to have gone away; and afterwards told me he deſign'd to have clapp'd me up in Priſon, and laid all upon me.

Mr. Serj. *Maynard.* My Lord, the moſt that has been offer'd by the Priſoner has been to diſcredit the Witneſſes; we ſhall prove, by Sir *John Nicholas* (Clerk of the Council) that Sir *Thomas Nicholas* himſelf acknowledg'd *Bolron*'s Honeſty, and that he deny'd the Knowledge of *Ruſhton*, and afterwards own'd it.

Witneſſes produc'd to ſupport the Credit of the King's Witneſſes.

Sir *John Nicholas* was ſworn.

Sir *J. Nicholas.* Sir *Thomas* confeſs'd before the Council that *Bolron* was his Servant till within theſe Twelve Months, that for his Honeſty he had nothing to ſay to him, till of late, that he had not behav'd himſelf ſo well in giving Information againſt him, and that he found him, what he always thought him to be, a Fool; he deny'd, at firſt, that he knew *Ruſhton*, the Prieſt, but at his ſecond Examination ſaid, the Fear of an old Law againſt harbouring Prieſts occaſion'd him to do it.

Mr. Attorney. We will now call a Witneſs, or two, in Anſwer to what has been ſaid of threatning his Wife.

Mrs. *Bolron* was ſworn.

Mrs. *Bolron* depos'd, That ſhe was unwilling to go before the Juſtice, becauſe ſhe cou'd ſay little to the Purpoſe; but that her Huſband wou'd have her go, if ſhe ſaid nothing: But that he never threaten'd her, to make her accuſe Sir *Thomas*, or any one elſe.

Mrs. *Bolron*, Sen. was ſworn.

She depos'd, That ſhe heard her Son, *Bolron*, ſay to his Wife, ſhe ſhould go if ſhe ſaid nothing, but he did not threaten her; and that ſhe heard Sir *Thomas* ſay (after *Bolron* was marry'd) that he never had a more faithful Servant, and that he would do what he cou'd for him.

Mr. J. *Dolben.* Call *Phiſwick* again: You were truſted by all the *Gaſcoignes*, What ſay you to *Bolron*'s Reputation?

Phiſwick. I can ſay nothing againſt his Honeſty; I knew no Ill by him while I was his Fellow-Servant.

Mr J. *Jones* directs the Jury.

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Then Mr. Serjeant *Maynard* and Mr. Solicitor ſummon'd up the Evidence for the King: After which, Mr. Juſtice *Jones* alſo ſumm'd up the Evidence, and gave his Directions to the Jury; wherein he tells them, that as to the 6000 *l.* which *Phiſwick*, Sir *Thomas*'s Receiver, had teſtify'd was return'd to *London*, there was a great Part of it of which no Accompt was given; for tho' 300 *l. per Annum* was return'd to my Lady *Tempeſt*, and 400 *l.* a Year to Mr. *Gaſcoigne*, that cou'd not amount to near ſo much in four Years: He obſerv'd alſo, That there were two Witneſſes for the King as expreſs as cou'd be; and tho' *Shippon* had depos'd, that *Bolron* was at his Houſe that very 30th of *May*, when he ſays Sir *Thomas* made him the Offer of 1000 *l.* to kill the King, and then it was impoſſible *Bolron* ſhou'd be at the Conſult he pretended, or that Sir *Thomas* ſhou'd afterwards make him that Offer he had ſworn to, yet he told them they were to conſider that the King's Witneſs was upon his Oath, and he that teſtify'd againſt him was not; and farther, that the Witneſs for the Priſoner was a Papiſt, and ſo of leſs Credit in a Cauſe of this Nature; for he cou'd not want an Indulgence for ſaving one from the Gallows, who was to be canoniz'd for a Saint if the Plot took Effect. That as to *Bolron*'s telling *Babbington*, (when he acquainted him he had Orders to ſue him) *That he wou'd then do that which he did not intend to do*; this was but an ambiguous Speech, and it was hard to infer from it, that he intended to ſwear falſly, and take away his Maſter's Life, and ſo commit both Murder and Perjury: And as to the Witneſſes who depos'd, that they heard *Bolron* both ſay and ſwear that Sir *Thomas Gaſcoigne* was not concern'd in the Plot, that, Mr. *Jones* ſaid, might very well be, becauſe *Bolron* was then a Papiſt, and engag'd in the Plot; however, he did not ſwear judicially, nor was he bound to diſcover what he knew to the Men he ſpoke to; but now he was

Page 511. Witneſs being a Papiſt, and unſworn, ſaid not to be of equal Credit with the King's Witneſſes.

upon

upon his Oath in a Court of Law, and gave an expreſs Teſtimony: As to the Witneſs who depoſes that *Mowbray* ſaid, in *Auguſt* laſt, he knew nothing of the Priſoner, he ſaid, his Fears of the Papiſts (which he hinted in his Evidence) might occaſion that Speech: As to the two Witneſſes who depos'd they heard *Mowbray* and another contriving how to take away Sir *Thomas Gaſcoigne*'s Life, *&c.* he thought it highly improbable they ſhou'd ſpeak of it before Strangers, and tho' the Witneſſes afterwards ſaid they were not in the Room with *Mowbray*, yet then they did not agree entirely in their Teſtimony, one ſaying, they were on the Top of the Stairs, and the other at the Bottom.

Mr. J. *Dolben* added, He obſerv'd that the Jury took Notice how improbable it was that Sir *Thomas Gaſcoigne* ſhou'd ſue *Bolron* upon thoſe Bonds, and take a Courſe to turn him out of his Farm at a Time when he knew *Bolron* was privy to this Conſpiracy, and that Sir *Thomas* himſelf had offer'd him 1000 *l.* to kill the King. Mr. J. *Dolben* acknowledg'd the Thing was improbable; but yet, he told them, they muſt give a Verdict according to their Evidence: And that there being two Men who ſwore poſitively to a Thing which lay within their own Knowledge, ſcarce any Improbability ought to weigh againſt ſuch Evidence. That the Papiſts had many ſecret Contrivances, and *Bolron* himſelf was a Papiſt at that Time.

Improbability not of Weight againſt poſitive Evidence.

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Mr. J. *Pemberton* ſaid farther, That *Bolron* having taken the Oath of Secrecy and the Sacrament upon it, Sir *Thomas* was in no Apprehenſion of his diſcovering him, let him uſe him never ſo ſeverely, for that *Bolron* being a Papiſt, he dare not do it on the Peril of Damnation; and tho' ſuch a Streſs was laid upon *Bolron*'s being a Debtor to Sir *Thomas*, the Jury muſt not lay any Streſs at all upon it, for if Sir *Thomas* was found guilty, the Money wou'd be due to the King, and *Bolron* wou'd gain nothing by his Conviction.

Sir *T. Gascoigne* acquitted.

Then the Jury withdrew; and, after half an Hour's Recess, brought in their Verdict, That Sir *Thomas* was *Not Guilty*; and the Verdict being recorded, the Court arose.

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The TRYAL *of* ROGER PALMER, *Esq; Earl of* Castlemain *in the Kingdom of* Ireland, *for High Treason, at the King's Bench Bar, on* Wednesday *the* 23*d of* June, 32. Car. 2. 1680.

THE Earl was arraign'd at the King's Bench Bar on the 16th of *June*, 1680.

Indictment for High Treason, in conspiring the Death of the King, the Subversion of the Government, Religion, &c.

The Indictment set forth, That *Roger Palmer*, Esq; Earl of *Castlemain* in the Kingdom of *Ireland*, not having the Fear of God before his Eyes, or weighing the Duty of his Allegiance, *&c.* did, on the 20th of *June*, in the 30th Year of the King, at the Parish of St. *Giles*'s in the *Fields*, in the County of *Middlesex*, and with divers other false Traitors unknown, traiterously imagine and intend the Death and final Destruction of the King, and to alter and utterly subvert the ancient Government of this Kingdom, and to extirpate the true Protestant Religion: And to accomplish the said Treasons and traitorous Imaginations and Purposes, The said *Roger Palmer*, Esq; Earl of *Castlemain*, and other false Traitors unknown, at the Time and Place aforesaid, did traiterously assemble, consult, and agree to kill and depose his Majesty, and introduce the *Romish* Religion in this Kingdom; and the better to effect the same, did traitorously promise divers great Rewards, and pay divers Sums of Money to several Persons unknown, and did also write divers Notes to incite several other Persons to engage in the said traitorous Designs: All which is laid to be against the Duty of his Allegiance, the King's Peace, *&c.*

To which Indictment the Earl pleaded Not Guilty; and *Wednesday* the 23d of *June*, was appointed for the Tryal.

Wednesday

Wednesday the 23d of *June*, 1680, the Court being set, and the Earl brought to the Bar by the Lieutenant of the *Tower*, the Jurors were call'd, and the following Gentlemen were sworn:

Sir *John Cutler*,	Barts.	*Fra. Dorrington*,	Esqs.
Sir *Reginald Foster*,		*Hugh Squire*,	
Henry Herriot,	Esqs.	*Charles Good*,	
Richard Cheney,		*John Pulford*,	
Thomas Johnson,		*Edward Claxton*,	
John Roberts,		*Fr. Mayhew*, Gent.	

The Jury being charg'd with the Prisoner, Mr. *Bonithon* open'd the Evidence, and Mr. Attorney open'd the Indictment, and took Occasion to observe, That my Lord *Castlemain* was the Person who manag'd the Evidence for the Prisoners who were try'd for the Popish-Plot, and was always present at those Tryals, and countenanc'd the Criminals, and became an Intercessor for them. Then the King's Evidence was call'd, and first

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Dr. *Otes* was sworn.

Page 515. *Otes*'s Evidence of several Letters sent and receiv'd by the Lord *Castlemain* about the Plot.

He depos'd, That in the Year 1677, he was sent into *Spain* by the Jesuits, where he staid several Months, and transacted Business for them, and return'd into *England* in *November*, and brought several Letters from the *English* Fathers there; among which was one directed to my Lord *Castlemain*, which the Fathers shew'd the Deponent in *Spain* when they gave it him; and it was to inform my Lord, *That the Fathers in* Spain *were very zealous to concur with the Fathers in* England *in the Design, (which was the Subversion of the Government, altering Religion, and the Destruction of the King.)*

L. C. J. Was this express'd in the Letter?

Otes. The Word *Design*, was under which we used to comprehend all those Things.

L. C. J. What did you do with the Letter?

Otes. I gave it to the Provincial, Mr. *Strange*, being a Stranger to my Lord myself; nor do I know whether my Lord was then in *England*: But I went over to St. *Omers* in *November* or *December* 77, and there came a Letter from my Lord *Castlemain*

ſoon after, directed to the Fathers of that Society, in which my Lord gave them an Account of that Letter he had receiv'd from *Spain*, and ſaid, He was glad the Fathers in *Spain* had ſo good an Opinion of his Integrity. And in *March* following there came another Letter to St. *Omers* from my Lord *Caſtlemain*, (which I ſaw) giving an Account of a Letter he receiv'd from the Rector of *Liege*, whoſe Advice he did not like; for the Rector of *Liege* and the Rector of *Ghent* were mighty zealous that the ſecular Clergy ſhou'd be concern'd in the Affair, and my Lord ſaid, He was unwilling to have the ſecular Clergy engag'd, becauſe they were a looſe Sort of Men, of no Principles, and not fit to be truſted. In *April* I came over to *England* to the Conſult, which was began at the *White-horſe* Tavern in the *Strand*, and afterwards the Conſpirators divided themſelves into ſeveral Companies, where they agreed on the King's Death, and I was employ'd to give an Account of the Senſe of one Company to another; and, my Lord, I did conſent to the King's Death, and an Oath of Secrecy was adminiſter'd: My Lord *Caſtlemain* was there [at *Wildhouſe*] too within ſome few Days after the Conſult, and he was deſirous that an Agreement might be made between the Monks and them, [the Jeſuits] (for there was a Difference between them) that they might have the Aſſiſtance of that Order to carry on the Deſign.

Page 516.

L. C. J. Wou'd he ſay, He deſir'd Aſſiſtance to carry on the Deſign, and you a Stranger to him?

Otes. I had been at Mr. *Langhorn*'s Chamber in the *Temple*, Father *Caius*'s, and ſeveral other Places for them, and had given them an Account of my Buſineſs, and I did ſee this Gentleman the Priſoner there. This was in *May*, I did not know his Name then. It was the latter End of *June*, three Weeks after, before I knew him; but my Lord cou'd have no Apprehenſions of me, becauſe he ſaw they intruſted One with their Concerns.

L. C. J. How did you come to know his Name?

Otes.

Otes. I was going with Mr. *Langhorn* over *Lincolns-Inn* Fields, towards *Fuller*'s Rents, in *June*, one Evening, and we met my Lord *Castlemain*, whom Mr. *Langhorn* saluted, and presented me to my Lord. We went with my Lord to Mr. *Fenwick*'s Chamber, where they discours'd of the Transactions of the Consult, and how unanimous the Fathers were in signing the Consult. They talk'd of laying aside the King, and bringing in the Popish Religion; and my Lord said, he wish'd them Success, and that, *Now he shou'd be reveng'd for the Injuries done to him.*

Lord *Castlemain*, Mr. *Otes*. Repeat your Journey again.

Otes. I sail'd for *Spain* in *April* 77, and return'd from *Valladolid* to *England* in *November*. I went over to St. *Omers* in *November* following, and from thence to *Wotton*. In *March* 1677-8 I went to *Liege*, and return'd to St. *Omers* again. And in *April* I came over hither, to the Consult, and staid here sometime after. *Otes's* Voyages to *Spain* and *Flanders*.

Lord *Castlemain*. When you met me in *Lincolns-Inn Fields*, was any Body with me? Page 517.

Otes. I did not take Notice of that.

L. C. J. You say you were two Hours at *Fenwick*'s Chamber. What was the Main of your Discourse? For what you have said may be contain'd in four Lines.

Otes. They talk'd of the Loss they had sustain'd by the *French* King's taking St. *Omers*; for the Crown of *Spain* had settled four or 500 *l.* a Year upon their College; and they were consulting about writing to *Le Chase*, to move the *French* King to restore that Revenue.

L. C. J. How came you to discourse that Affair in *England*?

Otes. When *Langhorn* presented me to my Lord, he told him, I was serviceable to them, and was come from St. *Omers*.

L. C. J. How did they bring in the Discourse of the Design against the King?

Otes. They were Things so generally talk'd of by the Jesuitical Party, that they hardly ever met but they mention'd it: How it was introduc'd

then, I can't be positive; but, as I remember, they were speaking of my going over to St. *Omers* from the Consult, and my returning again to *England* so soon.

L. C. J. Did you know that my Lord *Castlemain* ever heard of this Matter before?

Otes. I think not of the Particulars of the *Design.*

Page 518. L. C. J. When you mention *the Design*, do not you always mean the Death of the King?

Otes. The Word *Design* was so taken among us, and so receiv'd by my Lord *Castlemain.*

L. C. J. How can you say it was so receiv'd by him?

Otes. He has often, in his Letters, spoken of introducing the Popish Religion, and annex'd it to the Word *Design.*

L. C. J. Now, methinks, you make the Word *Design* mean something else than killing the King.

Otes. Yes, my Lord, the Subversion of Religion and Government.

L. C. J. Did he put in *the Altering the Government*, as well as the bringing in the Catholick Religion.

Otes. No, my Lord, I won't say that.

L. C. J. When we examine concerning Men's Lives, we must be careful of their Words.

Otes. I had omitted to acquaint the Court, that I saw my Lord *Castlemain* write a Letter that Night I was with him at *Fenwick*'s Chambers, which I went to the General Posthouse with, it being late. I saw only the Superscription indeed, but by that I found it the same Hand the Letters were in that we receiv'd from him in *Spain* and at St. *Omers.*

Lord *Castlemain.* You saw Letters in *Spain* from me?

Otes. Yes, I have.

Lord *Castlemain.* Did not you say, at *Wildhouse*, You did not know me, nor I you?

L. C. J. He says, He can't tell whether you knew him, but he did not know you.

Lord

Lord *Castlemain.* Was there any Discourse of killing the King at *Wildhouse* ?

Otes. I won't charge it there, because I am upon my Oath, tho' I morally believe there was Discourse bad enough.

Lord *Castlemain.* Was there any Body by at *Fenwick*'s Chamber besides ourselves, when you say we had that Discourse?

Otes. I don't remember any Body besides Mr. *Langhorn*, and *Fenwick*, unless a Maid came in now and then.

Lord *Castlemain.* Did you ever discourse with me after that? Page 519.

Otes. I don't remember I have.

Lord *Castlemain.* Did not you see me at *Liege* when you were over there?

Otes. No, my Lord, I waited on a Gentleman that went to take Orders, and staid there but one Night.

Mr. J. *Jones.* When did you first discover this Business concerning my Lord *Castlemain* ?

Otes. The last Sessions of the long Parliament; And I accus'd him *Trinity* Term was Twelve-Month, and my Lord was committed; for when *Dangerfield* came in and accus'd my Lord *Castlemain*, I brought a Charge a second Time against him: I had charg'd him before the Parliament with having a Hand in the Design in general.

Lord *Castlemain.* When you were before the King, you spoke of a Divorce.

Otes. I will give Evidence of that, if my Lord comes to be indicted for his Priesthood.

Mr. Attorney. What the Witness has said in another Place he is not to treat of now.

Lord *Castlemain.* If I prove him an ill Man in any Place, is not that fit to be spoken here: Since he has brought the King upon the Stage, and accus'd me before his Majesty and your Lordships of a Divorce, I ask him whether he saw it?

Otes's Evidence of a Divorce between the Lord *Castlemain* and *Barbara* Dutchess of *Cleaveland.*

Otes. I heard my Lord say at *Wildhouse*, he had been at great Charge to carry on that Business of the Divorce: And a Priest's Chamber being search'd, a Letter was found, wherein the whole Case was stated between him and his Wife *Barbara*:

bara: And, my Lord, I did give the King an Account, that I saw in *Strange*'s Hand an Account of a Divorce between my Lord *Caſtlemain* and *Barbara* Dutcheſs of *Cleaveland.*

Witneſs not to be examin'd of Matters foreign to the Iſſue.

Mr. Attorney. My Lord, if he may aſk ſuch Queſtions about ſuch foreign Matters, any Man may be catch'd.

L. C. J. This is not ſo remote, but Uſe may be made of it.

Lord *Caſtlemain.* How can a Man be catch'd in the Truth?

Mr. Attorney. My Lord may catch him, if he can, in any Thing he gives in Evidence here; but he is not bound to anſwer Queſtions that concern not the Point in Iſſue.

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Lord *Caſtlemain.* I aſk you whether you ſaw a Divorce, and where? Or whether you ſaid ſo?

Otes. I do not remember whether I ſaid ſo or no; I have it down, but I have not my Papers here. [Otes *being about to withdraw, my Lord deſir'd he might ſtay; and he ſtaid in Court.*

Dangerfield was call'd.

Dangerfield call'd as a Witneſs for the King.

Lord *Caſtlemain.* I muſt except to his Teſtimony: He has been convicted of Felony, broke Priſon, and been outlaw'd upon it: Beſides, he is a Stigmatick, has ſtood in the Pillory, and been burnt in the Hand. I deſire the Court will hear what my Council can ſay as to his being a Witneſs.

Mr. Attorney. Here is a Pardon for all theſe Offences.

L. C. J. Is Felony and Outlawry in it?

Mr. Attorney. Yes, my Lord.

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A Pardon will not reſtore a perjur'd Perſon to his Credit; but ſuch Perſon ſhall not be upbraided with it.

L. C. J. If a Man be convicted of Perjury, no Pardon can make him a good Witneſs, tho' it may take off the Reproach ſo far, that he ſhall not be upbraided with the Perjury afterwards: But whether a Perſon burnt in the Hand for Felony and pardon'd, can be a Witneſs, may be a Point fit for my Lord's Council to ſpeak to?

Mr. J. *Jones.* My Lord, do you except againſt that one Particular?

Lord *Caſtlemain.* I ſtand upon both his being pillory'd and burnt in the Hand.

L. C. J. Tho'

L. C. J. Tho' he shou'd be held capable of being a Witness, yet you may give in Evidence every Record of the Conviction of any Sort of Crimes he has been guilty of, and they shall be read towards invalidating his Testimony.

16 Records of Conviction against *Dangerfield*.

Lord *Castlemain*. We have Sixteen, but I shall bring but Six.

One attainted of Felony and pardon'd, cannot be of a Jury.

Mr. *Darnal*, of Council with the Prisoner, insisted, That a Person attainted of Felony cou'd not be a Witness, notwithstanding he had obtain'd a Pardon. He said, it was adjudg'd in 11. *Hen.* 4. That one attainted of Felony, and pardon'd, cou'd not be of a Jury: Also in *Brown* and *Crashaw*'s Case it was resolv'd, That a Man attainted and pardon'd, cou'd not be of an Inquest; and for the same Reason, the Testimony of such Persons was to be rejected: And in 12 *Jac.* in *Brownlow*'s Reports, *fo.* 47, it is reported, That the King pardon'd a Man attainted for giving a false Verdict; yet he shou'd not be again admitted on a Jury; and the Reason given, is, That tho' the Punishment was pardon'd, yet the Guilt remain'd: And in *Cro. Eliz. fol.* 686, in *Shelburn*'s Case, it is held, that altho' the King may pardon Simony, yet he cannot enable a Simoniack to retain a Living.

Page 522. Simony pardon'd, yet does not restore the Offender to a Capacity of retaining a Living.

L. C. J. That is because the Act makes such a one incapable of retaining a Living.

Mr. Attorney. What Mr. *Darnal* advances, is contrary to the general Opinion and constant Practice: When a Man is pardon'd, no Man can say he is a Felon, or perjur'd: He can't be reckon'd so to any Intent or Purpose whatsoever.

L. C. J. It is consonant to Law and Reason, that a Pardon shou'd stop Mens Mouths from reviling Speeches, which only tend to a Breach of the Peace, and can be attended with no good Consequences: But it is another Thing to say, the Person pardon'd shall be deem'd *liber & legalis homo*. He may be outlaw'd notwithstanding the King's Pardon.

Mr. J. *Jones*. It restores him to wage Battel, and then he is to be accounted *liber & legalis homo*.

Mr.

Mr. J. *Raymond.* How many have been Witneſſes after they have been convicted of Felony and pardon'd? Particularly *Witherington.*

One admitted a Witneſs after an Attainder of Felony and Pardon.

Mr. Recorder. He was admitted a Witneſs, though the Judges knew he was convicted, and had receiv'd Sentence of Death.

Whether one may be a Witneſs who can't be of a Jury

Mr. Attorney. A great many Men may be admitted Witneſſes, that cannot be Jury-Men.

L. C. J. Give an Inſtance, beſides the Caſe of *Kindred.*

Villain diſabled.

Mr. Attorney. A Villain might be a Witneſs, tho' he cou'd not be of a Jury.

L. C. J. Tho' he was not a Freeman, he might be an honeſt Man.

Mr. Recorder. My Lord *Hobart* ſays, A Pardon takes away the Guilt.

L. C. J. So far as that, he ſhan't be queſtion'd for it; but it can't in Reaſon be ſaid, that a Man guilty of Perjury, is as innocent as if he had never been perjur'd.

Clergy reſtores one to his Credit. Page 523.

Mr. J. *Jones.* In my Lord Chief Juſtice *Hale*'s Pleas of the Crown, he ſays, That a Man who has had the Benefit of his Clergy, is reſtor'd to his Credit.

Then Mr. J. Raymond *went down to the Common-Pleas, to have the Opinion of that Bench.*

Mr. Recorder. A Pardon takes away not only *Pœnam*, but *Reatum*, according to my Lord *Hobart.* Felony is an Offence againſt the King, and when the King pardons it, it ceaſes: And in another Place it is ſaid, It pardons all Diſabilities incident to him.

Mr. J. *Jones.* That is in Caſe of a Pardon before Conviction.

L. C. J. Does not my Lord *Coke* ſay, The taking of a Pardon does not prove any Offence; and that it ought not to be concluded from thence, that the Perſon was guilty; but the proper Concluſion is, that he was deſirous to be ſafe. It can't be thought, that every Man who is pardon'd, is guilty of all the Offences enumerated in the Pardon.

Mr. J. *Jones.* There is a Difference taken in that very Point, between a General and a Special Pardon:

Pardon: He that accepts a special Pardon must be intended to have some Consciousness of Guilt.

Mr. Justice *Raymond* return'd from the Court of Common-Pleas.

L. C. J. Mr. J. *Raymond* hath put both Cases to my Brethren of the Common-Pleas, (*viz.*) That the Witness was convicted of Felony and burnt in the Hand; and that he was outlaw'd for Felony, and had a general Pardon: They are of Opinion, that a general Pardon wou'd not restore him to be a Witness after an Outlawry for Felony, because of the Interest the Subject hath in him; but where one is burnt in the Hand, they look upon it as a more general Discharge than a Pardon alone wou'd amount to: And they say, if he had been convicted of Felony, and not burnt in the Hand, the Pardon wou'd not have set him upright; but being convicted, and burnt in the Hand, they suppose he is a Witness.——— I perceive my Brethrens Opinion is, That if a Man was convicted of Perjury, a Pardon cou'd not set him right, because of the Peoples Interest in the Thing.

A general Pardon does not restore one out-law'd for Felony to his Credit, but Clergy does restore one convict of Felony.

Page 524. Convict of Perjury, a Pardon will not restore him.

Mr. *Dangerfield* was sworn.

He depos'd, That about a Year since my Lady *Powis* sent him with a Letter to my Lord *Castlemain*, and that my Lord wrote an Answer by the Deponent, which my Lady *Powis* read aloud to the Deponent and Mrs. *Cellier*, in which were these Words; *This Person I like well, and tho' he be no Scholar he will serve to instruct the Youths as he shall be directed*: That by the Youths, my Lord, meant the St. *Omers* Witnesses whom his Lordship used to instruct; and it was a common Saying amongst them, when any of them were out in their Parts, *I must go to my Lord* Castlemain *for my Lesson*; and that my Lord went with them to the Tryal, and complain'd of the ill Usage some of the Witnesses receiv'd there.——— That my Lord was one of the Persons who employ'd him to get *Lane* out of the *Gate-House*, and sent him to his Solicitor, Mr. *Lawson*, (who was then in Court) to know how far he had proceeded in

Dangerfield admitted to be sworn: He deposes, That my Lord manag'd the St. *Omers* Witnesses;

that Affair; and that the Deponent afterwards got *Lane* discharg'd.

L. C. J. How came you into my Lord's Acquaintance?

Dangerfield. When I went with my Lady *Powis*'s Letter, was the first Time; and a pretty while after, in the Month of *July*, I went to wait on his Lordship again, about some Letters that came from *Nevil, alias, Paine*, which were of the same Purport with those I convey'd into Colonel *Mansel*'s Chamber, to promote the Sham Plot: There was a Purpose, my Lord, that so many Letters shou'd be convey'd into the Houses of several Persons of Quality, call'd Presbyterians, (for that was the Character that all Persons who were not for promoting the Catholick Interest lay under.) These Letters of *Paine*'s his Lordship approv'd, and order'd several Copies to be made of them, and said, he wou'd contribute to those who were concern'd in that Matter, and actually sent forty Shillings for his Part, as Mrs. *Cellier* told me.

Mentions a Sham Plot.

L. C. J. Who were concern'd in this?

Dangerfield. My Lady *Powis* and the Lords in the Tower: I was by when my Lord *Petre* and my Lord *Arundel* agree'd to it; they call'd it the Presbyterian Plot when I discours'd with them about it.

Mr. J. *Jones.* How far was my Lord *Castlemain* concern'd in this?

Dangerfield. I have not heard his Lordship speak of it by that Name.

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L. C. J. What have you to say against my Lord?

Dangerfield. A pretty while after this, in the Middle of *August*, (being the Day after I had been treated with, in the Tower, to kill the King) I waited on my Lord *Castlemain*, who sending his Servant out of the Room, look'd on me with a very stern Countenance, and demanded why I refus'd the Business for which I was taken out of Prison; and added, Was not you in the Tower Yesterday? I answer'd, Yes, my Lord; wou'd your Lordship have me kill the King, I suppose that's the Business; *Yes*, (my Lord reply'd,) *it is*; and fell into

Deposes that my Lord was angry with him because he refus'd to kill the King.

into such a Fury, that I was forc'd rudely to leave the Room, and go down Stairs.

L. C. J. Had you refus'd to kill the King to my Lord?

Dangerfield. Yes, I said any Body but my King, my Lord. And I have heard my Lord, several Times, in familiar Discourse, call the King Tyrant.

L. C. J. What kind of Fury did his Lordship shew when you refus'd?

Dangerfield. He was in a great Rage: His Lordship is very cholerick, and he was bustling about, I didn't know what he design'd, and was loth to stand the Test of his Fury; he seem'd by his Looks to be meditating Revenge.

Lord *Castlemain.* Was I never angry with you but at that Time?

Dangerfield. I know not of any other Time that your Lordship was angry with me.

The Lord *Castlemain* enters upon his Defence.

Then my Lord *Castlemain* enter'd upon his Defence, and first he procur'd a Record, wherein it appear'd, that one *Hastings* had been prosecuted for Buggery by *Otes*, and upon his Tryal was acquitted; but this my Lord Chief Justice told my Lord *Castlemain* did not affect Mr. *Otes*'s his Credit, for it did not appear from hence upon what Grounds the Jury acquitted the Party, and it was not to be concluded, from the Jury's acquitting a Person, that the Witnesses were perjur'd.

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Witness's Credit not affected by a Jury's going contrary to it.

Then my Lord call'd Mr. *Hutchinson.*

He depos'd, That he converted *Otes* to the Romish Religion, that *Otes* was very poor, and that the Deponent employ'd him to transcribe some Things for him, for which he gave him ten Shilling; and that *Otes* said, it was a very sad thing to want Bread, and he wou'd suffer no more for Conscience Sake.

L. C. J. You thought this had been meritorious, now, and it is High Treason.

Lord *Castlemain.* He was a Priest, my Lord; but he has confess'd his Error and turn'd Protestant.

Otes. My Lord, I never told him, I wou'd not suffer any more for Conscience Sake, nor did I ever want Bread.

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Dr. D. My Lord, this Mr. *Hutchinson* is mad; he was my Curate at *Barking*, and my Lord of *London* acquainted me with his Distraction, and directed me to provide another Curate.

Mr. *Armstrong* was call'd.

He depos'd, That he was a Scholar with *Otes*, at *Valladolid* in *Spain*, and that *Otes* continu'd there about four Months.

Mr. *Palmer* was call'd.

He depos'd, That *Otes* was an ordinary Scholar at St. *Omers*, but by Reason of his Years he was allow'd to sit at a Table by himself, and had other Priviledges.

Mr. *Hilsley* was call'd.

He depos'd, That *Otes* did not come over with him in the Packet-Boat, when he came to the Consult, (as *Otes* had depos'd.)

Mr. *Osborn* was call'd.

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He came to testify that *Hilsley* told him, when he came to *England*, that he left *Otes* at St. *Omers*; but this was held to be no Evidence.

Mr. *Gregson* was call'd.

He depos'd, That *Otes* lay at his House, *Easter* 1677, that he came and lodg'd at his House again about *All Saints*, in the same Year, and that *Fenwick*, the Jesuit, paid for the Lodging, Mr. *Otes* being poor at that Time.

Otes. I had nothing then but what the Jesuits allow'd me, which was a very scanty Living.

Mr. *Litrott* was call'd.

He depos'd, That my Lord *Castlemain* never endeavour'd to procure a Divorce.

Lord *Castlemain*. *Otes* said, before the King and before the House of Commons, that I did actually sue out a Divorce, and he saw it; now I wou'd prove that it was impossible to get a Divorce.

Mr. J. *Raymond*. You must not be permitted to do that, it is not pertinent to the Question.

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A Witness shall not be aspersed for any Testimony he has given of another Matter, and in another Place, without a Record of his Conviction produc'd.

L. C. J. If you come to prove Mr. *Otes* has sworn falsly in another Matter, and in another Court, tho' you bring several Witnesses to shew he did not swear true, we are not to hearken to them; for this is to make him perjur'd in another Matter which we are not to try here. If he had sworn

in

in another Place any thing that contradicts what he says now, it would be proper; but all he says here is, that you said you expended a great deal of Money about a Divorce.

Lord *Castlemain*. My Lord, I had indicted him of Perjury, but for Mr. Attorney General; I employ'd two Persons to attend the Clerk of the Peace for Copies of the Indictments against Mr. *Langhorn* and Mr. *Ireland*, and the Clerk of the Peace said, he cou'd not do it without Mr. Attorney's Authority.

Mr. Attorney. The Council did not think it fit you shou'd have them.

The Records against *Dangerfield* were produc'd.

Records of *Dangerfield's* being out-law'd for Felony, and several Times pillory'd for cheating.

L. C. J. Here it appears, That *Dangerfield* was burnt in the Hand, and out-law'd for Felony, pillory'd for Cheating; twice pillory'd.

Clerk of the Crown. Here is a Record for another Shilling Gilt; here are three at *Salisbury*, for three several Guineas; he was adjudg'd to the Pillory for them all.

Mr. *Bennet Dowdal* was call'd.

He depos'd, That Mrs. *Cellier* spoke to him to tell *Dangerfield* that he shou'd not be troubled at my Lord *Castlemaine*'s Anger.

L. C. J. You must not ask him what Mrs. *Cellier* said.

Mrs. *Cellier* was call'd.

Mrs. *Cellier*'s Evidence of my Lord's ill Opinion of *Dangerfield*. Page 530.

She depos'd, That she sent *Dangerfield* to my Lord *Castlemaine* that Day Twelve-Month, (and he went from my Lord to the Lords in the Tower) and that an Hour and half after my Lord *Castlemaine* came to her, and was very angry, and said, Mrs. *Cellier*, I thought you wou'd not forfeit your Discretion, to send such a Rascal to me; if you send him to me again I will bid my Servants kick him; and that she bid *Dangerfield* take no Notice of my Lord's Anger, for he was a good Man, and tho' he was angry one Time he wou'd be pleas'd another; and that she wou'd have sent *Dangerfield* afterward to my Lord, and he said, Pray, Madam, don't send me thither, I wou'd rather go 100 Miles on your Errand.

Mr. *Dowdal* alſo depos'd farther, That, about the 21ſt of *June*, *Dangerfield* told him my Lord was angry with him about his going to the Tower, in my Lord's Name, unknown to him.

L. C. J. And yet *Dangerfield* ſays, That in *Auguſt* after, he had this Diſcourſe with my Lord of killing the King.

The Lady *Powis* was call'd.

She depos'd, That ſhe never ſent a Letter by *Dangerfield* to any Body in her Life, neither did ſhe ever read a Letter in his Preſence, nor was he ever long enough in her Company for her to do it: And Mrs. *Cellier* depos'd, That no Letter was read by my Lady *Powis* in the Preſence of her and *Dangerfield*.

Richard Barker was ſworn for the King.

Page 531. He depos'd, That before *Whitſontide*, 1678, his Servants told him that Mr. *Otes* had been at his Houſe, but it was the latter End of *June* before he ſaw him in *London* himſelf.

——— *Turner* was ſworn for the King.

He depos'd, That he ſaw *Dangerfield* at my Lord *Caſtlemaine*'s in *June*, *July*, or *Auguſt*, but he thought it was in *July*.

——— *Woodman* was ſworn.

He depos'd, That he carry'd a Letter from Mrs. *Cellier* to my Lord *Caſtlemaine*, and that he receiv'd 3*l.* or thirty Shillings of his Lordſhip; but being aſk'd if it was for *Dangerfield*, he ſaid, he did not know that.

The Chief Juſtice directs the Jury. Page 532. Then the Chief Juſtice began to ſum up the Evidence, but was interrupted by Mr. Attorney, who deſir'd Leave firſt to ſum up the Evidence for the King: Which Mr. Attorney having done, the Chief Juſtice went on, and ſaid, If Mr. Attorney had not interrupted him, he ſhou'd not have left out any Thing Mr. Attorney had taken Notice of; and that he wou'd have no Man think him partial, where our Religion, and the Life of the King, and the Government, were in Danger; but on the other Side he muſt ſay, that there ought to be competent Proofs where Men are charg'd with ſuch Things, becauſe their Lives, Eſtates, and Honours, were at Stake.

As

As to Mr. *Otes*'s Testimony, he said, that no great Matter had been offer'd by my Lord against his Credit; but as to *Dangerfield*, they saw many enormous Crimes prov'd against him, and tho' he was allow'd to be a Witness in Law, yet it was the Business of the Jury to weigh the Reputation of the Witnesses; nor did he think the Judge cou'd discharge his Conscience without taking Notice of such Things: That had Mr. *Dangerfield* been only guilty of this Treason, he shou'd have thought him a competent Witness notwithstanding, for that was *Otes*'s Case too; but when so many other Crimes of another Sort had been prov'd against him, whether the Man were on the sudden become a Saint, by being become a Witness, he left to them to consider. That they shou'd consider also, how he was contradicted in his Testimony by the Lady *Powis* and Mrs. *Cellier*, tho', it was true, they were not upon their Oaths, but that was not their Fault, the Law wou'd not allow it: And having gone through the Evidence, as well for as against the Prisoner, he told the Jury that where two Witnesses were produc'd, both speaking materially to the same Thing, and one is believ'd and the other not, then there was but one Witness, in Truth, which was not sufficient to find the Prisoner guilty.

Page 533.

If two Witnesses are not believ'd by the Jury in Treason, the Prisoner ought to be acquitted.

Mr. J. *Jones*. I think it necessary, in a Case of Treason, that there shou'd be two Witnesses believ'd by the Jury.

Mr. J. *Raymond*. If the Law says there must be two Witnesses produc'd, it says they must be both believ'd.

Then the Jury withdrew, and, being return'd, brought the Prisoner in *Not Guilty*.

My Lord Castlemaine acquitted.

Page 534.

The TRYAL *of* JOHN GILES, *for an Assault of* John Arnold, *Esq; a Justice of Peace of the County of* Monmouth, *the* 14*th of* July, 32. Car. 2. 1680.

The Indictment for assaulting and wounding Mr. *John Arnold.*

THE Indictment set forth, That the said *John Giles*, on the 15th of *April*, in the 32d Year of the King, at the Parish of St. *Dunstan*'s in the West, in the County of *Middlesex*, did, with divers other Malefactors unknown, (of Malice afore thought) lie in wait, and make an Assault on the said *John Arnold*; and the Throat and Face of the said *John Arnold* did grievously cut with a certain Knife, and divers other dangerous Wounds did give the said *John Arnold* with their Swords, one whereof was between his Belly and his left Pap, of the Depth of seven Inches, two others in his Breast, and two in his left Arm; all which was laid to be against the King's Peace, his Crown and Dignity.

Page 535.

Mr. *Gibbs* open'd the Indictment, and Mr. *Holt* and Mr. *Thomson* open'd the Evidence; wherein they intimate that this was a Breach of the Popish Plot, and that the Reason of this cruel Assault upon Mr. *Arnold* was occasion'd by his putting the Laws in Execution against the Papists, and particularly his prosecuting and convicting one *Evans*, a Popish Priest.

Page 536.

Then the Witnesses for the King were call'd; and, first,

Mr. *Arnold* was sworn.

Page 537.

Mr. *Arnold*'s Evidence of his being assaulted.

Arnold. On the 15th of *April* last, I was with some Company at the *Devil* Tavern till about ten a Clock at Night, and then remembering I had Business with Mr. *Phillips* (my Council in a Cause to be heard next Morning before the King and Council) who lives near the End of *Bell-Yard*, I desir'd the Company to stay a Moment till my Return, and call'd some of my Friend's Servants (who were in another Room) to go with me; crossing

croſſing *Fleetſtreet* I ſaw two Men in Campaign Cloaks follow me, and imagin'd them to be the Servants I had call'd, and entring into *Bell Yard* one of them got before me and look'd earneſtly in my Face; I paſs'd him, and by the Light of a Candle in a Woman's Hand ſaw him perfectly, and it was the Priſoner who now ſtands at the Bar; his Companions coming up, they laugh'd aloud; I took no Notice, but went on to *Jackanape's-Lane-End*, and there, as I was looking down for the Kennel, I had a Cloak thrown over my Head, and they ran me croſs the Lane with my Head ſo hard againſt the oppoſite Wall, that, I think, 'twas broke; I drew, but cou'd not turn to defend my ſelf before I was knock'd down, and perceiv'd a ſharp Thruſt in my Side, the Point running into my Belly; I defended my ſelf as well as I could, but was run thro' both Arms with a Broad Sword, thro' another Part of my Arm with a ſmall Weapon, and receiv'd ſeveral other Wounds; and whilſt one of them kept me down with his Foot on my Breaſt, he was run into the Leg by another of them, I believe, for he ſaid, *Damme, thou haſt ſpoil'd my Leg*; I receiv'd four or five Wounds in my Body, notwithſtanding a Pair of Whalebone Bodice I had on, which were not Proof, tho' they (ſometimes finding their Swords double) thought they were; and one ſaid, *Damme, he has Armour on, cut his Throat*; and immediately one of them gave me ſeveral Cuts on the Face, ſome of the Marks will never be effac'd, and I fear I ſhall never wholly recove the Damage receiv'd by the Bruiſes: By a Candle in a Window, and by a Link-Boy coming by, I again ſaw the Face of the Priſoner; then the Cloak being pull'd off, I cry'd out, and People, came who carry'd me to the *Sugar-Loaf*, and from thence to my Lodging, and ſent for a Surgeon; they laugh'd aloud all the Time they were abuſing me, and when they went away, one of them ſaid, *Now, you Dog, pray for*, or, *pray again for the Soul of Captain* Evans; and tho' one Man, both in Face and Voice, may be like

another, I do (on my Oath and Conſcience) believe the Priſoner to be one of them.

Page 538. *Giles.* Mr. *Arnold* knew me in *Monmouthſhire* as well as any Man.

Arnold. I might often ſee him at Aſſizes and Seſſions, but not know his Perſon or Name.

Giles. That's ſtrange, ſince my Wife's nearly related to you both by Father and Mother.

Arnold. She may be ſo, but I don't know it.

Stephen Phillips was ſworn.

He depos'd, That at ſtating ſome Accompts betwixt the Defendant *Giles* and Mr. *Richmond*, *Giles* ſaid he had made Haſte thro' *Glouceſterſhire*, leſt he ſhou'd be ſtopt on Suſpicion of Mr. *Arnold*'s Buſineſs.

George Richmond was ſworn, and depos'd, He heard *Giles*, at the ſame Time, being the 5th of *May*, ſpeak Words to the ſame Effect.

Walter Powel was ſworn.

He depos'd, That on the 5th of *May* laſt, he went with Mr. *Giles* to the Shop of one *Peter Darcy*, a Sword-Cutler, at *Uske* in *Monmouthſhire*, and *Giles* deſiring *Darcy* to mend his Sword, *Darcy* aſk'd if he had been fighting with the Devil, no (ſays *Giles*) with damn'd *Arnold*; That *Darcy* ſaid he muſt not ſpeak ſuch Words, and that *Giles*'s Wife (pulling him by the Coat) bid him hold his Tongue; and he thought the Apprentice was by.

William Richmond was ſworn.

Page 539. *Richmond.* The Afternoon before Mr. *Arnold* was wounded, *Giles* aſk'd me where he might buy a good Rapier; I ſaid, I knew not, but he had a good Back-Sword then in the Houſe.

Mr. *Gibbs.* Give an Account of his Acquaintance with *Lewis* the Jeſuit.

Richmond. Giles ſaid he wou'd perſwade the Executioner not to execute *Lewis*; I ſaw him dip Cloaths in *Lewis*'s Blood at the Execution.

Mr. *Thompſon.* Relate the Time of his coming to his Lodging.

Richmond. We went that Day to Mr. *Philpot*'s in *Long-Lane*, from thence into *Whetſtone*'s Park, then to the *Helmet* in *Drury-Lane*, and then to the *Peacock*,

Peacock, where we met *Elizabeth Edwards*, one *Powel*, and another; we ſtaid there till about eight or nine, and then went to our Inn, the *King's-Arms* in St. *Martin's-Lane*; I left *Giles* by the Kitchen Fire, and went to drink in my Chamber; about Twelve I ſaw the Maid making his Bed, but heard no more of him till about One a-Clock he call'd at my Chamber Door, and bid me good Night.

Mr. *Thompſon*. Pray, Mr. *Arnold*, give an Account of *Giles's* Examination.

Arnold. He confeſs'd he was at his Lodging at Ten a-Clock, and I heard him acknowledge this Examination.

Giles. I ſaid, I went to Bed then.

Mr. *Holt*. We will now give an Account of his Principles.

——— *Bridges* depos'd, That about a Twelve-Month ago *Giles* ſaid the Popiſh Religion was the beſt, and he that was not of it wou'd be damn'd, and that whoever affirm'd the Plot againſt the King and Government was a Rogue and a Thief. Page 540.

Giles. Was not this on your charging me to be a Papiſt? I ſaid, I knew of no Plot, and they that ſaid I was a Papiſt, or knew any thing of the Plot, were Rogues or Whores.

Then *Bridges* repeated the Words again that he mention'd before, and ſaid, thoſe were the very Words.

Walter Moor depos'd, That *Giles* ſaid, if the Lords in the Tower were executed, there wou'd be a greater War than ever was in *England*, and 'twould coſt more Blood than ever was ſpilt; and ſaid, there was no Plot.

Mr. *Reynold* depos'd, That at *Langoone* in *Monmouthſhire*, on the 2d of *May*, he heard *Giles* ſay, he thought Mr. *Arnold* wounded himſelf; and his Wife aſking how he cou'd wound himſelf in his Arms, he reply'd, 'twas himſelf or ſome of his Friends.

Mr. *Hobbs* depos'd, That he ſaw Mr. *Arnold* with two Wounds on his Arm, two on his Face, one on the Throat, which bled very much, two on the Breaſt, and one in the Belly; that one of

thoſe on the Breaſt was two Inches and an half long, but neither of them very deep, but that in
Page 541. the Belly was the Depth of ſix Inches and an half, and that he believ'd a Man cou'd not ſo wound himſelf.

[More Witneſſes attended, but the Council did not preſs their Examination, the Evidence being ſo full and the Court in Haſte.]

Giles's Defence. Then Mr. *Darnal*, Council for the Priſoner, enter'd upon his Defence, and ſaid, That tho' the Evidence againſt him was very ſtrong, he did not doubt producing ſubſtantial Witneſſes to prove him innocent of the Fact: And call'd Mr. *Philpot*.

Philpot depos'd, That he was in Company and drinking with *Giles* when Mr. *Phillips* came in, and afterwards, ſome other Perſons coming, aſk'd, What News? That *Giles* anſwer'd, That he knew of none but a cruel Aſſaſſination of Mr. *Arnold*, that he was ſorry for it, and 'twas ſtrange ſuch a Thing ſhou'd be. That he was there all the Time, and heard nothing of *Damn him or ſink him*, for the Deponent hated ſuch Company.

Herbert Jones, Mayor of *Monmouth*.

Jones depos'd, That *Giles* and he went out of Town, to *Glouceſter*, together; that they ſtaid at the *Old Bear* in *Glouceſter*, where being at Dinner,
Page 542. and (the Quarter Seſſions being held there at that Time) ſeveral People came to them to hear News concerning Mr. *Arnold*; that they were as ſorry as any Perſons for it, and ſaid, that 'twas a very ill Thing; that they went from thence to the *New Bear*, and drank ſeveral Pints of Cyder, and were ſeveral Hours in the Town: He farther depos'd, That Mr. *Giles* was chief Conſtable, and (as ſuch) Mr. *Arnold*, being a Juſtice of Peace, muſt certainly know him; that *Giles* was always a Proteſtant, and he had ſeen him at Church within half a Year. And *Giles* offer'd to produce a Certificate of his being at Church ſince he came to Town; and ſaid, he had taken the Oaths of Allegiance and Supremacy.

John Jones, the Cutler's Apprentice.

Jones depos'd, That *Giles* came one Morning and bid him give that Sword to his Maſter to be mended; that when he came again, in the Afternoon, to ſee if 'twas done, (*Walter Powel* being in the Shop) his Maſter aſk'd, if he had been fighting with the Devil? No, (ſaid *Giles*) I never met with *Arnold*: He farther ſaid, that his Wife did not bid him hold his Tongue, nor there was no other Diſcourſe of *Arnold* as he heard.

John Howell, Servant to Mr. *Richmond*.

He depos'd, That *Giles* and he came to Town together about Twelve a-Clock that Day Mr. *Arnold* was wounded, that he left *Giles* about Nine at Night, and went into the Chamber with his Maſter, where they drank two Pints of Brandy, and heard no more of *Giles* till about Eleven or Twelve a-Clock, that he bid his Maſter Good Night.

Anne Beron.

She depos'd, She was with *Giles* and other Neighbours, on *Thurſday* in *Eaſter* Week, at the *Peacock* in *Covent-Garden*, and conti nu'd with him all the Time till between Nine and Ten at Night, when ſhe left him taking a Pipe of Tobacco at his Inn. Page 543.

Elizabeth Crook, Servant of the Inn.

She depos'd, That ſhe made his Bed about Ten a-Clock, and he went to Bed betwixt Ten and Eleven; that he ſaid, he wou'd put out the Candle himſelf, but ſhe might lock him in and take the Key.

Mr. *Recorder*. Did *Richmond* come in while you were making the Bed?

Crook. He was not there that I know of.

[Then *Richmond* ſaid, He follow'd her in, pretending Courtſhip, and that ſhe told him, tho' the Houſe was very full, *Giles* wou'd lie by himſelf; at which ſhe ſaid, ſhe remember'd he was there.]

[Then Mr. *Arnold* laughing, the Priſoner obſerv'd, 'twas Gentleman-like to make Sport at his Witneſſes.]

King's

King's Council. What Time of Night did he make Love to you.

[Here *Richmond* and the Maid had ſome paſſionate Words in the Court; one ſaying 'twas about 10, and the other about 12 a-Clock.

Edward James.

James depos'd, That he din'd with *Giles* at the *Peacock*, and was afterwards with him at the Inn, from 9 a-Clock 'till 12, and then left him in the Kitchin.

Page 544.

Robin Gibbon, the Hoſtler.

He depos'd, That he gave Mr. *Giles*'s Horſe half a Peck of Oats about 10 a-Clock, but knew not when he went to Bed.

John Chadwick.

Chadwick. Giles was at my Houſe between Eight and Nine a-Clock that Night.

Elizabeth Crook.

She depos'd, She went Home with the Priſoner between Nine and Ten, ſaw him in his Lodging then, and again the next Morning.

[Here the Recorder again queſtioning *James* and *Crook*: *James* ſaid, he was certain he left *Giles* in the Kitchin at Twelve.

Peter Powel.

He depos'd, That on *Eaſter-Thurſday* he was in Company with *Giles* 'till near Nine at Night, but then parted, and ſaw him not afterwards.

Sir *Geo. Jefferies's* Obſervations on the Evidence.

Mr. Recorder ſumm'd up the Evidence, and obſerv'd, that in Caſes of this Nature, the Law had not proportion'd the Puniſhment to the Crime: He ſaid, That now it was impoſſible to doubt the Truth of the Popiſh-Plot: That this was a Piece of Villainy little ſhort of that acted on Sir *E. Godfrey*: But he gave the Jury a Caution, that either what he had ſaid of the Popiſh-Plot, or of Sir *E. Godfrey*, ought to be look'd upon as Evidence againſt the Defendant. Then the Recorder repeated the Subſtance of the Evidence, and obſerv'd, That *Giles* cou'd give no Account where he was that Night Mr. *Arnold* was wounded, from Nine a-Clock 'till it was near One: And concludes, That the Proof ought to be very ſtrong to convict Men of ſuch an Offence; tho' they cou'd

not

not expect so clear a Proof as in a Matter of Right between Man and Man, and of Things that were transacted in the Face of the Sun.

Then the Jury withdrew; and in about half an Hour return'd, and brought the Prisoner in *Guilty*. After which the Court adjourn'd. *Giles* is convicted

Saturday the 17th of *July*, the Court being set, and *John Giles* brought to the Bar, Judgment was pronounc'd by the Recorder, *viz.*

That he shou'd stand in the Pillory in *Lincolns-Inn-Fields*, at *Gray's-Inn*, and at the *May-pole* in the *Strand*, with a Paper signifying his Offence; that he shou'd pay a Fine of 500 *l.* and lie in Prison 'till he paid it, and find Sureties for his good Behaviour during Life. The Judgment.

The TRYAL *of* ELIZABETH CELLIER, *at the King's Bench Bar, for High-Treason, on the* 11*th of* June, 32 Car. 2, 1680.

Page 547.

THE Indictment set forth, that the said *Elizabeth Cellier*, not having the Fear of God before her Eyes, or weighing the Duty of her Allegiance, *&c.* did, on the 1st Day of *November*, in the 31st Year of the King, at the Parish of St. *Clement-Danes*, in the County of *Middlesex*, compass and imagine the Death of the King, the Subversion of the Government and Religion established: And to accomplish the said Treason, she did, together with other Traitors unknown, at the Time and Place aforesaid, traitorously assemble, consult, and agree, to depose and murder his Majesty, and introduce the Romish Religion: And did then and there contribute, and pay divers great Sums of Money to several Persons unknown, to procure them to kill his Majesty, and introduce the Romish Religion: And that in order to conceal the said Treasons, the said *Elizabeth Cellier* did pay and expend several other Sums of Money to divers other Persons unknown, falsly The Indictment for High Treason in conspiring the Death of the King, and endeavouring to throw the Plot upon other People.

falſly to throw and impoſe the ſaid Treaſon upon other People, againſt the Duty of her Allegiance, the King's Peace, *&c.*

John Gadbury was ſworn.

Gadbury depos'd, That Mrs. *Cellier* endeavour'd to bring Sir *Robert Peyton*, and the three Gentlemen that were turn'd out with him, over to the King's Intereſt, but believ'd ſhe was never concern'd in any Conſpiracy againſt his Majeſty: And depos'd farther, That Mrs. *Cellier* had told him, that one *Smith* and one *Philips* were willing to diſcover ſomething againſt *Otes* and *Bedloe*, on which he acquainted her, that *Smith* had inform'd him, (the Deponent) he cou'd ſay enough to invalidate the Evidence of *Otes*: That ſhe reply'd, She car'd not if it coſt her 10 Guineas, if he wou'd be honeſt, and diſcover the Truth: That the ſaid likewiſe, *Dangerfield* talk'd of a Nonconformiſt's Plot, that wou'd take off the Popiſh-Plot.

Gadbury the Conjurer's Evidence. Page 550.

L. C. J. Did ſhe ſpeak of any Popiſh Prieſts or Jeſuits coming over?

Gadbury depos'd, That he believ'd he heard her ſay, there were more coming over, but did not mention on what Account: That he had no Reaſon to conceal her Crimes, ſhe having done him a great Prejudice, but wou'd not falſely accuſe her; and depos'd, That ſhe was always an Enemy to Plots, and ſaid, ſhe fear'd the Nation wou'd be ruin'd before the Popiſh Plotters wou'd be deſtroy'd.

L. C. J. What diſcourſe had you with her in *Weſtminſter* Abbey?

Gadbury depos'd, That paſſing thro' the Abbey ſhe ſaid, This Place was formerly fill'd with Benedictine Monks, and the Temple with Fryars: What if it ſhou'd be ſo again? [Then Serj. *Maynard* whiſpering, he reply'd, Mr. Serjeant, I am none of the Tribe of 41.]

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L. C. J. Did ſhe never aſk you any Queſtions about the King's Life?

Gadbury depos'd, That ſhe did propoſe the Queſtion, whether the King wou'd live or die? And that (the King being then ill) ſhe fear'd

he

he wou'd die, and expected a ſatisfactory Anſwer from the Conſultation of his Art; but on his ſaying he wou'd not inform her becauſe 'twas his Sovereign; ſhe ſaid ſhe wou'd go to another Aſtrologer: That he had ſometimes reſolv'd her Queſtions of the Proſperity of Perſons in the World, and other indifferent Matters, but wou'd not meddle with this: He farther depos'd, That ſhe once aſk'd him how to get *Dangerfield* out of Priſon, and ſomewhat relating to Papers or Deeds that concern'd *Bedloe*, which *Dangerfield* was to ſeize or ſearch for.

L. C. J. Did you any Thing for her at that Time?

Gadbury depos'd, That ſhe brought him a Nativity, for which he erected a Scheme, to know if he were a Perſon to be truſted; that he then knew not for whom 'twas deſign'd, but has ſince underſtood 'twas for *Dangerfield*, whoſe Perſon or Name was unknown to him, 'till he came before the King and Council, for that he before paſs'd by the Name of *Willoughby*; and that the Reſolution of that Queſtion he had forgot.

L. C. J. Did ſhe at any Time talk of Mr. *Dugdale*? Page 552.

Gadbury depos'd, That ſhe inform'd him a Woman was to go to *Windſor* to beg *Dugdale*'s Pardon, for he repented of the Evidence he had given at ſome Tryal.

Dangerfield was call'd.

Dangerfield call'd as a Witneſs againſt her.

Mrs. *Cellier*. I except againſt his Teſtimony, for I can prove him whipt, tranſported, pillory'd, perjur'd, *&c.* He threaten'd to kill ſome of my Witneſſes, if they wou'd not ſwear according to his Directions; and he has been indicted for Burglary. [Which *Dangerfield* (being aſk'd) anſwer'd, he wou'd take it at their Proof.]

Ralph Briſcoe was ſworn for the Priſoner.

Briſcoe depos'd, He ſaw one *Thomas Dangerfield* burnt in the Hand; and tho' he had not ſeen him in ſeveral Years, believ'd him to be the Man. [Then ſhe ſaid ſhe cou'd prove him perjur'd, but not convicted; and guilty of Forgery, which

wou'd

wou'd not be allow'd as Evidence, unleſs ſhe produc'd the Record.]

Mr. Recorder. What ſhe calls Forgery is not Forgery in Law, 'tis counterfeiting Guineas.

Mrs. *Cellier*. I have ſeveral Records which will be ſworn to. [To which *Dangerfield* pleading his Majeſty's Pardon, Mrs. *Cellier* ſaid, the Pardon did not extend to ſome Crimes he was convicted of, and produc'd a Record, by which it appear'd, he was outlaw'd upon a Felony, and the Court order'd him to fetch his Pardon.]

Thomas Williamſon was ſworn.

Williamſon depos'd, That Mrs. *Cellier* had employ'd him in Matters of Charity, to get Priſoners releas'd, and particularly *Dangerfield*, whoſoever remain'd, but knew not for what Reaſon.

Margaret Jenkins was ſworn.

She depos'd, That ſhe never ſaw Mrs. *Cellier* and *Dangerfield* more than twice together; That once at *Powis*'s Houſe they diſcours'd concerning the Priſoners, but nothing about the Plot.

Suſan Edwards was ſworn.

She depos'd, That ſhe had often ſeen them together, and heard the Priſoner ſay, That the Popiſh Plot wou'd turn to a Preſbyterian Plot; and that *Dangerfield* ſaid, he wou'd make it his Intereſt it ſhou'd be ſo; and that he thought he ſhou'd be hang'd if he did not turn Rogue; and that ſhe (the Deponent) told him, he'd be no greater Rogue than before: And farther depos'd, That (the Priſoner ſaying, She wou'd do the Deponent's Buſineſs for her) ſhe went in Danger of her Life.

Page 553.

Bennet Dowdal was ſworn.

He depos'd, Mrs. *Cellier* propos'd a Match for him; and that ſhe and *Dangerfield* us'd to diſcourſe of that to him, but never concerning the King or the Plot.

Several Records of Convictions for Felony produc'd againſt *Dangerfield*.

[Then Copies of Records being read of his ſtanding on the Pillory at *Salisbury*, for uttering falſe Guineas, and of an Outlawry for Felony, Mr. Recorder ſaid, 'twas not the ſame Perſon.]

L. C. J. Capt. *Richardſon*, is this the Man that broke *Chelmsford* Goal.

Richardſon.

Richardſon. He was brought from thence by *Habeas Corpus*; and, I believe, has been burnt in the Hand for Felony. [Then my Lord himſelf objected againſt his Evidence.]

[*Dangerfield* return'd, and his Pardon being read, inſtead of *Utlagaria qualiacunque pro Feloniis quibuſcunque*, was only inſerted *Omnia Maleficia & Utlagaria qualiacunque*; and 'twas my Lord Chief Juſtice's Opinion, *Utlagaria* reach'd only to Outlawries, between Party and Party; and gave *Dangerfield* a very ſevere Reprimand in open Court.]

Dangerfield's Pardon adjudg'd defective by the Court, as to the Outlawry for Felony.

Then the Lord Chief Juſtice ſaid to the Jury, That there was but one Witneſs, and that not direct, which was not ſufficient in a Caſe of Treaſon; and the Jury brought her in *Not Guilty*; and then my Lord committed *Dangerfield*, for want of Sureties for his good Behaviour.

Mrs. *Cellier* is acquitted.

The TRYAL *of* HENRY CARR, *on an Information for publiſhing a falſe and ſcandalous Libel; at Guild-hall* London, *the* 2*d of* July, 1680.

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THE Information was brought in the *Crown-Office* in *Hillary Term* 1679, and ſet forth, That whereas there had been a Plot and traitorous Conſpiracy againſt his Majeſty, and the Government, and the Religion eſtabliſh'd, of which Treaſon divers Traitors had been convicted and attainted, The ſaid *Henry Carr*, well knowing the Premiſes, and maliciouſly intending to ſcandalize and bring into Contempt the Juſtice of the Kingdom, did, on the 1ſt of *Auguſt*, in the 31ſt Year of the King, at the Pariſh of St. *Sepulchre*'s, *London*, print, and cauſe to be publiſh'd, a ſcandalous Book, intitled, *The Weekly Packet of Advice from Rome.* In which are the following Expreſſions:

Information for printing and publiſhing a Libel reflecting on the Juſtice of the Nation.

'There is lately found out by an experienc'd
'Phyſician, an incomparable Medicament, call'd
'the Wonder-working Plaiſter, truly Catholick
'in Operation, ſomewhat of Kin to the Jeſuits

'Powder,

'Powder, but more effectual. The Vertues 'of it are ſtrange and various: It will make 'Juſtice deaf as well as blind; takes Spots out of 'deepeſt Treaſons, more cleverly than *Caſtle-Soap* 'does common Stains: It alters a Man's Conſti-'tution in two or three Days, more than the 'Vertuoſo's Transfuſion of Blood in ſeven Years: 'Is a Great Alexipharmick, and helps Poiſons, 'and thoſe that uſe 'em: It miraculouſly exalts 'and purifies the Eye-ſight, and makes People 'behold nothing but Innocence in the blackeſt 'Malefactors: It is a mighty Cordial in a decli-'ning Cauſe, ſtifles a Plot, as certainly as the 'Itch is deſtroy'd by Butter and Brimſtone: It 'makes Fools wiſe Men, and wiſe Men Fools, 'and both of them Knaves. The Colour of this 'precious Balm is bright and dazzling; and being 'apply'd privately to the Fiſt in decent Manner, 'and a competent Doſe, infallibly performs all the 'ſaid Cures, and many others, to the great Con-'tempt of the King, the Scandal of the Govern-'ment, and the Adminiſtration of Juſtice, *&c.*'

The Printer's Evidence.

Stevens was ſworn.

He depos'd, That he printed the Book, and had ſeveral of the Original Papers from Mr. *Carr*; and did not remember he had any from any other Perſon, than from him or his Order.

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Mr. *Williams.* Did he bring them in Writing? And have you any to ſhow?

Stevens. They came in Writing; but we did not regard 'em when they were printed.

Mr. *Williams.* Had you ever a Paper from *Carr*'s own Hand?

Stevens. We had few from his own Hand.

L. C. J. Had you any? Upon your Oath, had you one or two?

Stevens. I can't remember. I can't ſay, upon my Oath, he ever brought one.

L. C. J. How came you to ſay you had ſeveral from him?

Stevens. Ay, from him; that is, from him or his Order.

L. C. J.

L. C. J. Had he any Money for theſe Papers?

Stevens. I have heard ſo. I ſuppoſe he has had Money of *Curtis* the Publiſher.

L. C. J. Did *Carr* ever own to you, that he was Author of this Book, or any of theſe Papers?

Stevens. I never aſk'd him. I took it for granted.

L. C. J. Did he ever own it?

Stevens. I have heard him deny it.

L. C. J. Why ſhou'd you take it for granted, when he has deny'd, and never own'd it?

Stevens. I don't ſay he never own'd it.

L. C. J. What Tricks we have in the World! Did he treat with you as if he were the Author?

Stevens. Yes I grant that: I ſuppo'd him to be the Author.

Williams. Who brought you the Writing by which the Book was printed?

Stevens. Mr. *Carr*'s Boy brought them; and I do not remember that any other Perſon brought any.

L. C. J. Who gave Directions for the printing it?

Stevens. The Publiſher: *Curtis* chiefly. Mr. *Carr* did not deal immediately with me. Page 557.

L. C. J. Did you ever blame *Carr* for writing too ſharply in this Book againſt the Government? And what Anſwer hath he made? Did he deny that he did it?

Stevens. I have blam'd him for it; but do not remember that *Carr* at that Time deny'd his being the Author, or what Anſwer he made.

L. C. J. Has he deny'd being Author of this particular Book; or of that Book in general, call'd, *The Packet of Advice?*

Stevens. I have heard him ſay, ſometimes, that *he* was not the Author.

Mr. Recorder. And ſometimes what?

Stevens. I have heard him ſay, ſometime or other, that he was not the Author.

The Printer's Servant was ſworn.

He depos'd, That he cou'd not ſpeak to any one particular Packet, but that he fetch'd ſome in in Pieces, (no whole Sheets) from Mr. *Carr*'s own Hands;

Hands; and that Mr. *Carr*'s Boy brought ſome, but cou'd not ſay, Mr. *Carr*, or any other Perſon, brought any; that being but a Servant, he knew not who directed the Printing of 'em, but underſtood they came from Mr. *Carr*; and that the Papers ſo brought, (to the beſt of his Knowledge) were never printed before.

L. C. J. Read the Words of the Information.

Clerk. *Friday* the 1ſt of *Auguſt*, 1679, There is lately found by an experienc'd Phyſician, &c.

The Priſoner's Defence.

The Priſoner's Council inſiſted, That Mr. *Carr* was a Satyriſt againſt Popery, and his Packets, 'till this Fault, were very well lik'd: That in his writing, an extravagant Flight might ſlip from him, without any Ill; and that if he was a good Subject and a good Church-man, one that lov'd the Government in Church and State, he cou'd not be thought guilty of Malice; and ſuch a one they ſhou'd prove him to be.

His Witneſſes call'd.

Mr. *Sutton*, Mr. *Alyffe*, and Mr. *Ambler*, were call'd, and appear'd.

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Sutton depos'd, That he had known Mr. *Carr* for two or three Years, and had been with him at Church, but never ſaw him receive the Sacrament: That Mr. *Carr* had ſometimes diſown'd his being the Author of the Packet, and he did not think him capable of writing ſuch a Book; but depos'd farther, 'Twas ſomething like *Carr*'s Writing, and apprehended, by his Diſcourſe, he might write it.

Mr. *Ambler* depos'd, That he had known Mr. *Carr* three Years, and had been with him at Church; that he never diſcours'd him about the *Packet of Advice*, but had heard of the Book, and that Mr. *Carr* was commonly reported to be the Author of it.

Mr. *Alyffe* depos'd, That he knew Mr. *Carr*, and had ſeen him at Church, and that he carry'd himſelf reverently during the Time of Divine Service; but that the Deponent never aſk'd him if he wrote that Book.

Sir *Francis Winnington* urg'd, That the Defendant was not prov'd the Author of that individual Paper in the Information.

The

The Lord Chief Justice, in his Direction to the Jury, said, That he at first took this to be a Cause of small Moment; but was now convinc'd by the Noise and Shouts of the Audience, during the Tryal, that 'twas a Party Business; and told the People, he observ'd they were more free of their Acclamations than they were of their Purses; for though they espous'd and applauded him before he was in Distress, and wou'd lay out Money for a treasonable Pamphlet, when they refus'd it their Children to buy Bread; yet, if he come to be imprison'd for a *Penal* Sum, they wou'd all forsake him as they had done *Curtis*, and no one wou'd contribute any Thing, but leave him to rot in a Goal: And told the Jury, That it did not concern them whether the Prisoner was malicious or not malicious, they were only to try whether he were Publisher of the Book; and if they found him Guilty, he wou'd judge whether it imported Malice or not.

The Chief Justice directs the Jury.

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Then the Jury withdrew to consider of their Verdict; and, after near an Hour's Recess, brought the Prisoner in Guilty. Whereupon the Chief Justice and the Recorder commended the Verdict.

The Prisoner is convicted.

The TRYALS *of* THOMAS THWYNG *and* MARY PRESSICKS, *at* York *Assizes, for High Treason, on the* 29*th of* July, 32. Car. 2. 1680.

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THE Indictment set forth, That the present *Thomas Thwyng*, Clerk, and *Mary Pressicks*, Wife of *Thomas Pressicks*, not weighing the Duty of their Allegiance, *&c.* did, on the 30th of *May*, in the 31st Year of the King, at the Parish of *Elmest*, in the County of *York*, traitorously compass and imagine the Death of the King, and the Subversion of the Government and the Protestant Religion: And to accomplish their said Treasons, the Prisoners, together with other false Traitors, did, at the Time and Place aforesaid, assemble, consult, and agree, to depose and murder

The Indictment for High Treason in conspiring the Death of the King and the Subversion of our Religion and Government

his Majesty, and introduce the Romish Religion: And that the sooner to effect the same, they did expend and pay to divers other Traitors, to the Jurors unknown, several Sums of Money to carry on the said Treasons: And that the Prisoners did then and there subscribe a Note, to contribute divers Sums for compleating their said traitorous Designs; against the Duty of their Allegiance, the King's Peace, *&c.*

The Prisoners having been arraign'd, and pleaded Not Guilty to the Indictment, a Jury was sworn; after which the King's Witnesses were call'd, and, first,

Mr. *Bolron* was sworn.

Page 563. *Bolron*'s Evidence of the Prisoner's Concern in the Plot.

Bolron depos'd, That in 1674, he was Steward of Sir *Thomas Gascoigne*'s Coal-Pits; and in 1675 he turn'd Papist; and that about *January* 1676, Father *Rushton*, his Confessor, with Mr. *Thwyng*, and several others, came to the Deponent's House, and ask'd him how he stood affected to the Roman Catholick Religion; and (if there were Occasion) if he wou'd venture his Life and Estate in it? To which the Deponent agreeing, (being resolv'd to obey his ghostly Father in all Things) *Rushton* gave him the Oath of Secrecy: And that in 1677, Sir *Thomas Gascoigne*, Sir *Miles Stapleton*, my Lady *Tempest*, Mr. *Rushton*, Mr. *Thwyng*, and several others, met in the old Dining-Room in *Barnlow-Hall*, (Sir *Thomas Gascoigne*'s House) and there they agreed that the King shou'd be kill'd; and that Mr. *Thwyng* said, if they miss'd this Opportunity, they shou'd never have the like again; and that the effecting it wou'd be very beneficial to the Church of *Rome*: And farther depos'd, That they then and there likewise agreed to erect a Nunnery at *Dolbanck*, after the King was kill'd; and that my Lady *Tempest* offer'd them *Broughton* for the present, and *Thwyng* was to be Confessor of the Nunnery: He depos'd also, That he pay'd 10 *l.* to Mr. *Rushton*, in *Thwyng*'s Presence, towards killing the King; and saw a List in *Rushton*'s and *Thwyng*'s *Hands*, entitled, *A List of the Names of the Actors and Contributors engag'd in the Design of promoting the*

Roman

Roman Catholick Religion; and alſo of eſtabliſhing a Nunnery: By which was meant, raiſing Money for killing the King: That the Deponent paid 5 *l.* beſides the aforeſaid 10 *l.* to have his Soul pray'd for; and *Thwyng* told this Deponent afterwards, that 30000 *l.* was rais'd in *Yorkſhire*, *Lancaſhire*, and *Derbyſhire*, for killing the King; and the Liſt, or Particulars, was ſent beyond Sea. Page 564.

He depos'd farther, That in 1678, diſcourſing Mrs. *Preſſicks* at his own Houſe about the Plot that was juſt diſcover'd, ſhe ſaid, Father *Harcourt*, her Confeſſor, firſt engag'd her in it; and that ſhe ſaid alſo, that *Pickering* told her, he was to have kill'd the King, and ſhe was ſorry he did not do it; and that ſhe believ'd the Gun with which *Pickering* was to have kill'd the King, being found with him, was the Cauſe of his Execution: And that ſhe ſaid, the King was an Aſs, and not fit to govern; for what Money the Parliament gave him, he ſpent upon Whores and Concubines.

Mr. *Mowbray* was ſworn.

Mowbray's Evidence againſt Thwyng.

Sir *Tho. Stringer.* Come, Mr. *Mowbray*, tell your Knowledge.

Mowbray. Near *Michaelmas* 1676, Father *Ruſhton*, *Addiſon*, *Thwyng*, and other Prieſts, met at *Ruſhton*'s Chamber, and there agree'd to kill the King, becauſe he had not kept his Promiſe made to the Jeſuits beyond Sea, to bring in their Religion: They alſo declar'd, That *York* and *London* were to be fir'd; and that Force was to be uſed againſt the King, and all other Hereticks, that oppos'd the Advancement of their Religion. They ſaid, 'twas not only lawful, but meritorious to do it. There was a Liſt of thoſe engag'd in the Deſign; and *Ruſhton* and *Thwyng* were the Managers of it.

Sir *Tho. Stringer.* How came you to be truſted in ſo great a Buſineſs?

Mowbray. By aſſiſting at Maſs, I came into *Ruſhton*'s Favour: I took the Oath of Secrecy from him, and was permitted to be in the Chamber when the Prieſts were private with him.

Thwyng. How long ſince did you change your Religion?

Mowbray. Preſently after the Plot broke out.

Mr. J. *Dolben.* Well, what ſay you to *Mary Preſſicks?*

Mowbray. My Lord, I have nothing to ſay againſt her.

Mrs. *Bolron*, Sen. Mrs. *Bolron*, Jun. and *John Hutchinſon*, call'd againſt *Preſſicks.*

Mrs. *Bolron*, Sen. was ſworn.

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Mrs. *Bolron* depos'd, That Mrs. *Preſſicks* ſaid ſeveral Times at *Shippen*, that ſhe knew of the Plot, and ſaid, that *Pickering* was to have kill'd the King, and ſhe (Mrs. *Preſſicks*) was ſorry he did not do it; and that it had been done, but for *Otes* and *Bedlow*; and that Mrs. *Preſſicks* ſaid likewiſe, there wou'd be no Quiet in *England* 'till the Roman Catholicks got the Upper-hand; and there was not a Proteſtant left in *England*; and ſaid, the King ſpent his Money among Concubines, and was not worthy to be a King; and that ſhe (Mrs. *Preſſicks*) hoped an Army of Catholicks wou'd be rais'd to ſet up Popery.

Mrs. *Bolron*, Jun. was ſworn.

She depos'd, That about *Candlemas* 1678, and at *Eaſter* and *Whitſontide*, and ſeveral Times after the Plot was diſcover'd, ſhe heard Mrs. *Preſſicks* ſay, at the Porch in her Huſband's Houſe, That there was a great Conſpiracy carrying on, to alter the Government, and eſtabliſh the Romiſh Religion; and that her Grandmother was then preſent.

John Hutchinſon was ſworn.

He depos'd, That being in *Bolron*'s Kitchin, Mrs. *Preſſicks* aſk'd the Deponent, What News in his Country, and what became of the Papiſts? And that on the Deponent's ſaying, Some had given Bond, and ſome were gone to Priſon, Mrs. *Preſſicks* reply'd, We ſhall never be at Peace, 'till we are all of the Roman Catholick Religion; for the King is an Heretick, and ſpends more Money on his Whores, than on his Queen; and that at the Hall Door, going into the Parlour, ſhe told the Deponent, we ſhou'd never be at Eaſe 'till the Duke of *York* was made King.

Mr.

Mr. J. *Dolben.* Mr. *Bolron*, when came ſhe to your Houſe?

Bolron. About *Chriſtmas*, and ſtaid there about ſix Months.

Mr. *Dolben.* Did you charge Mr. *Thwyng* before the Juſtice?

Bolron. I only gave Juſtice *Tindal* an Account, that Sir *Thomas Gaſcoigne* promis'd me 1000 *l.* to kill the King; but gave my Information againſt *Thwyng* before the King and Council.

Thwyng. My Lord, this is Malice to Sir *Tho. Gaſcoigne*'s Family, to which I am related: 'Tis out of Revenge, I can prove it by ſeveral Witneſſes.

Nathaniel Wilſon examin'd for *Thwyng.*

He depos'd, That about *Michaelmas* laſt, *Bolron* aſk'd him if he knew any Thing of Father *Ruſhton*; and on his anſwering No, *Bolron* bid him (the Deponent) keep his Secrets, and he wou'd give him more than he cou'd addle [earn] in ſeven Years; and ſaid, unleſs he (*Bolron*) cou'd ſhed the Blood of ſome of them, he ſhou'd get nothing.

Thwyng calls his Witneſs to prove Bolron's Malice.

Thwyng. I deſire to know if *Bolron* nam'd me, as a Plotter, to Mr. *Lowther.*

Mr. *Lowther.* About the 24th or 25th of *June*, 1679, *Bolron* came and told me he had ſome Secrets to impart, and began to acquaint me what the Jeſuits and Prieſts deſign'd againſt the Government, becauſe the King did not keep the Promiſe he had made them beyond Sea. I call'd for a Bible to take his Examination; and, on my adviſing him to be careful, for his own Concern (as well as the Lives and Fortunes of the Gentlemen he accus'd) was at Stake, he was timorous, and look'd pale; and I aſk'd him the Reaſon of his Fear; and he ſaid, the Reaſon was, becauſe he had conceal'd it ſo long, and if the ſame was on me, it might make me as fearful as himſelf; and told me he had given his Information before Mr. *Tindal*; and that Mr. *Tindal* deſir'd him to acquaint me. I told him, I ſhou'd meet Mr. *Tindal* the Morrow, and then we wou'd take it jointly. I don't remember he mention'd Mr. *Thwyng*, but ſaid he

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ſhou'd recollect more, and wou'd give it in to the King and Council.

Obadiah Moor was call'd.

He depos'd, that about *Candlemas* was Twelve-Months, *Bolron* ſaid, neither Sir *Thomas Gaſcoigne*, nor any of his Family, were concern'd in the Plot; and that *Bolron* ſaid, he believ'd there was no Plot.

Mr. J. *Dolben.* He was then a Papiſt; but did not he tell you otherwiſe afterwards?

Moor. In *Auguſt* after, he ſaid he had but equivocated, and that there was a real Plot; and if he had ſworn a thouſand Lies, he cou'd have been forgiven 'em.

Stephen Thompſon was call'd.

Thompſon depos'd, That he was bound with *Bolron* to Sir *Thomas Gaſcoigne* for 60 *l.* and imagin'd *Bolron*, being his Servant, might know if Sir *Thomas* was concern'd in the Plot, and then there was no Fear of being ſu'd: That the Deponent enquir'd of *Bolron*, who anſwer'd, Sir *Thomas* was as ſinleſs of it as the Child that was unborn. He depos'd farther, That on *Holy Thurſday Bolron* told him, if Sir *Thomas* ſu'd him, he wou'd do him a greater Miſchief: That Sir *Thomas* was earneſt for his Money, but the Deponent prevail'd with him to ſtay three Weeks, that *Bolron* might go ſell his Houſe at *Newcaſtle*; but that in the mean Time *Bolron* went to *London*, and accus'd Sir *Thomas* of Treaſon; and as to Mrs. *Preſſicks*, he depos'd, That old Mrs. *Bolron* told him ſhe cou'd ſay nothing againſt her, but *Bolron* ſaid ſhe muſt do it.

Zachary Thorp was call'd.

He depos'd, That before the laſt Aſſizes, *Bolron* (telling him that Sir *Thomas Gaſcoigne* was clear'd) ſaid, *God damn the Jury, they were Rogues*; and that he likewiſe (telling the Deponent he was to go to the *York* Aſſizes againſt my Lady *Tempeſt*) ſaid, *God damn me, I will ruin 'em; if one Thing will not do, another ſhall.*

Mr. J. *Dolben.* What are you? *God damn me* comes very nimbly out of your Mouth.

Thorpe.

Thorpe. I marry'd the Gentleman's Daughter at the *Whitehart* in *Charterhouse Lane*, and live there.

Mr. J. *Dolben.* And draw Pots of Ale? Your Father-in-Law's a poor Alehouse-keeper.

Mr. Baron *Atkins.* Are not you a Papist?

Thorpe. No, my Lord, a Protestant of the Church of *England.* Then he depos'd farther, That *Bolron* offer'd to do any Thing for the Deponent, if he wou'd swear *Peter Shipton* knew no Harm by *Bolron*; and that *Bolron* said, I have taken his Bond, but I will have him from Court to Court; I will teach him to meddle with me.

Mr. J. *Dolben.* It's a Wonder he shou'd discover such Things to one he has small Acquaintance with. Page 567.

William Hardwick was call'd.

He depos'd, That he being to carry Mrs. *Pressicks* before the Justice, *Bolron*'s Wife said, 'he was sorry, for she thought her an honest Woman, and had been a good Neighbour.

Mary Walker was call'd.

She depos'd, That being Servant to Mrs. *Lassels*, (*Thwyng*'s Sister) *Bolron* offer'd the Deponent 10*l.* if she wou'd swear Mr. *Thwyng* was a Priest; and said, he wou'd be reveng'd of him, because he was near of Kin to Sir *Thomas Gascoigne*; and that she had two Witnesses to prove what she said.

[Mr. J. *Dolben* observ'd, It was the more improbable, that he shou'd offer it before two Witnesses: And Sir *Thomas Stringer* asking if she was a Papist, and whether *Thwyng* was a Priest? She said, she was a Catholick, but *Thwyng* no Priest.]

Mr. *Legget*, a King's Messenger, examin'd.

He depos'd, That in *August* last, in the Presence of the Deponent, *Bolron* ask'd his Grandmother if she did not say such and such Things? Who answer'd, She knew not; if she did, 'twas true; and that *Bolron* said afterwards, You thought my Grandmother knew nothing; but at Sir *Thomas Gascoigne*'s, they said, they never heard one swear a Thing more plain.

William Bacchus was call'd.

He depos'd, That *Bolron*'s Wife and Grandmother said, they knew nothing against Sir *Thomas Gascoigne*,

coigne, or any of his Family, but that they told the Deponent, that *Mary Preſſicks* ſaid the King was a Whore-Maſter, and maintain'd his Whores better than he did the Queen.

Cuthbert Hamſworth was call'd.

He depos'd, *Bolron* ſwore Revenge againſt my Lady *Tempeſt*, but ſaid nothing relating to the Priſoners.

Thwyng. My Lord, I have Witneſſes to prove I was not at *Barnlow-Hall* in 1677, as he ſwears I was.

George Twiſley, Sir *Thomas*'s Groom, was call'd.

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He depos'd, That Mr. *Thwyng* never came to *Barnlow-Hall* above once or twice in a Year, and ſtaid not above a Night or two at a Time; that *Thwyng* was there a Month before *Michaelmas*, but not at *Eaſter*, and no Company was there then, for he never was abſent; and that he, the Deponent, was now a Proteſtant.

Thomas Arcton was call'd, but had nothing to ſay, having never ſeen *Thwyng* before.

Joſeph Cooper was call'd.

He depos'd, That about twelve Months ago, on the Road, coming from *Aſherton Fair*, *Mowbray* ſaid, he knew nothing of the Plot, and he thought Sir *Thomas* did not, for if he had, *Mowbray* ſhou'd have known it as ſoon as *Bolron*; and ſaid, *Bolron* was a Rogue and a Knave for ſaying it.

Edward Cooper was call'd.

He depos'd, That coming from *Aſherton Fair* he met *Mowbray*, who ſaid, he believ'd Sir *Thomas* was not guilty of the Plot.

Thwyng. Mr. *Mowbray* declar'd, for eight or ten Months together, in 77, he knew nothing of the Plot.

Izabel Hayward, a Girl, who liv'd with *Bolron*, was call'd.

She depos'd, *Bolron* and his Wife differing about going to *London*, her Miſtreſs ſaid, if he made her go, ſhe wou'd ſwear that what he had ſworn againſt Mrs. *Preſſicks* was out of Malice.

Alice

Alice Dawſon was examin'd.

She depos'd, That Mrs. *Bolron* ſaid, about a Year and half ſince, ſhe was ſorry her Huſband had meddled with Mrs. *Preſſicks*.

Mrs. *Preſſicks* call'd *John Pepper*.

He depos'd, That he carry'd Mrs. *Preſſicks* from *Bolron*'s, on *Whitſon-Monday*, to Mrs. *Harriſon*'s at *Parlington*, and they ſtaid there till *Thurſday*. Page 569.

Mr. *Babbington* was call'd.

He depos'd, That *Bolron* ſaid, Mr. *Preſſicks* and and his Wife were his Enemies, and perſwaded Sir *Thomas* to ſue him.

Mr. J. *Dolben*, in his Directions to the Jury, obſerv'd, That the Evidence againſt the Priſoners was very different: That as to Mrs. *Preſſicks*, there was no Evidence but of what they had heard her ſay others were to do; nor did it appear ſhe was privy even to that, but that ſhe might have it by common Report: And as to her ſaying ſhe was ſorry *Pickering* did not kill the King, and that it wou'd never be well with *England* till the Catholicks had the upper-hand, he did not think ſuch Words amounted to Treaſon. —— That as to *Thwyng*, there were two poſitive Witneſſes againſt him; and that his Defence conſiſted in invalidating the Teſtimony of thoſe two Witneſſes, and as to that, he directed the Jury to conſider the Credit of thoſe the Priſoner had produc'd, and if it did appear to them that *Bolron* and *Mowbray* did ſwear againſt him maliciouſly, becauſe he was related to Sir *Thomas Gaſcoigne*'s Family, (which the Judge intimated he was of Opinion they did not) then they ſhould acquit him.

Mr. J. *Dolben* directs the Jury.

Words, unleſs they diſcover a Deſign to do ſome Act, not treaſonable.

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Mr. Baron *Atkins* ſaid, he thought that what *Bolron* depos'd againſt *Mary Preſſicks*, (*viz.*) That ſhe told him, that Father *Harcourt*, her Confeſſor, firſt engag'd her in the Plot, and was ſome Evidence of High Treaſon: But as to *Thwyng*, there were two poſitive Witneſſes againſt him, and he did not ſeem to credit thoſe Witneſſes that were produc'd by *Thwyng* to ſhew it was a malicious Proſecution.

Mr. Baron *Atkins* alſo directs the Jury.

Then

Then the Jury withdrew, and after ſome Time, return'd, and brought *Thomas Thwyng* in Guilty, and *Mary Preſſick* in Not Guilty.

Thwyng convicted. *Preſſick*'s acquitted.

After which, Sentence was pronounc'd againſt *Thwyng* as a Traitor: He was repriev'd till the 23d of *October*, and then executed.

Page 571. Sentence paſs'd on *Thwyng*. He is executed.

Page 572. ## *The* TRYAL *of Mrs.* ELIZ. CELLIER, *for a Libel, at the Old Baily, the* 11*th Day of* September, 32. Car. 2. 1680.

The Indictment. THE Indictment ſets forth, That *Elizabeth Cellier*, Wife of *Peter Cellier*, of the Pariſh of St. *Clement*'s *Danes* in the County of *Middleſex*, Gentlewoman, being of the Popiſh Religion, and not having the Fear of God before her Eyes, *&c.* and endeavouring to bring into Hatred and Contempt his preſent Majeſty, and the Religion and Government eſtabliſh'd; and to bring Scandal and Infamy upon divers Perſons, produc'd as Witneſſes, on behalf of the King, againſt her the ſaid *Elizabeth Cellier*, and other Perſons, who had been indicted of High Treaſon; the firſt Day of *September*, in the 32d Year of the King, at the Pariſh aforeſaid, did, falſly, maliciouſly, and ſeditiouſly, write and publiſh a ſcandalous Libel, intitled, *Malice defeated: Or, A brief Relation of the Accuſation and Deliverance of* Elizabeth Cellier; *wherein her Proceedings, both before and during her Confinement, are particularly related, and the Myſtery of the Meal-Tub fully diſcover'd, &c.* Wherein are contain'd theſe falſe, feign'd, and ſcandalous Words and Figures, [Here the ſeveral criminal Paſſages in the Libel are recited.] All which is laid to be of evil Example to others, againſt the King's Peace, *&c.*

The King's Counſel having open'd the Indictment, the Witneſſes were call'd.

William Downing, *John Penny*, and *Robert Stevens*, were ſworn.

Page 575. Mr. Baron *Weſton*. Begin with *Penny* firſt. What ſay you to that Book?

Penny

Penny depos'd, That he went to Mrs. *Cellier*'s (the Priſoner's) Houſe, to buy that Book which he had in his Hand, and had mark'd each Sheet of it; and that aſking the Price, ſhe told him two Pence, for ſhe ſold 'em to the Shops for eighteen Pence the Dozen; that thereupon ſhe fetch'd him the Book, and acknowledg'd it to be hers, and ſaid, there was another little Sheet to be added to it, and that he gave her two Pence for it. The Witneſſes call'd.

Mrs. *Cellier*. Did I ſay otherwiſe than *this is the Book*, or, *you may have the Book*.

Penny. She ſaid, twas her own Book, and if Occaſion were, ſhe cou'd have put more in't.

Mr. Baron *Weſton*. You, Yeſterday, acknowledg'd you writ every Word of it with your own Hand.

Mrs. *Cellier*. I hope, my Lord, a fooliſh Woman's Vanity (of which I knew not the Conſequence) ſhall not be brought as Evidence againſt me.

Mr. Baron *Weſton*. However, 'tis prov'd againſt you; it hath your Name in the Title Page, and ſold by your ſelf; that's owning and publiſhing it.

Mrs. *Cellier*. I have ſent for my Witneſſes, but can't find 'em; cou'd I produce them, I cou'd make my Defence.

Mr. Baron *Weſton*. For what Reaſon wou'd you have Witneſſes, when you have own'd you writ it your ſelf.

Mrs. *Cellier*. It's againſt the Honour of the Bench to take Advantage and give Evidence of my vain Words.

Mr. Baron *Weſton*. 'Tis not ſo, to repeat what you ſay: When the Court acquainted you to what Purpoſe Witneſſes might be of Uſe, you relinquiſh'd it, and acknowledg'd the Fact.

Mrs. *Cellier*. I am ſurpriz'd for want of Witneſſes; he only ſwears I ſaid 'twas mine, not that I was Author, or writ it. Page 576.

Penny. You ſaid, if 'twas to be writ again, you cou'd put more in it.

Mrs. *Cel-*

Mrs. *Cellier*. I ſaid 'twas mine, becauſe in my Cuſtody, as this Fan is mine, tho' I did not make it.

Penny ſaid, That he aſk'd her if 'twas her Book, (meaning if ſhe writ it) leſt ſhe might give him ſome other; and likewiſe aſk'd, if he cou'd have more on Occaſion, to which ſhe anſwer'd, I have but four or five Hundred, but ſhall have more in a few Days.

Downing ſet up.

Mr. Baron *Weſton*. Pray, look upon that Book, and the Title of it.

Downing. I know it very well, I printed Part of it; about the 22d of *Auguſt* Mrs. *Cellier* ſent for me to her Houſe, and ſaid, ſhe had been unjuſtly and publickly abus'd, and wou'd publiſh her Caſe, and there was nothing in it but Truth, and 'twas no Ways offenſive; I believ'd her, and agreed with her to print it at ten Shillings a Rheam, and was to print four Rheams of each Sheet: I printed to Folio 22, about half the Book, and then the Meſſengers found it at my Houſe, and carry'd it to the Secretary, Sir *Leoline Jenkins*, by whoſe Warrant we were both carry'd before him, and after Examination were bound to appear before the Privy Council, and when diſcharg'd by the Council, were bound to appear in the King's Bench, the firſt Day of the next Term: She has ſince printed the other Half ſomewhere elſe, and tho' ſhe promis'd to indemnify me from all Charge, yet ſhe oblig'd me to pay the Clerk of the Council's Fees, and ſaid, I had betray'd her.

Mr. *Dormer*. Who corrected the Sheets?

Downing. They were carry'd to her, and ſhe look'd over them.

Stevens ſet up.

He depos'd, That ſeeing this Book printing at Mr. *Downing*'s, and reading ſome of the Paragraphs, he aſk'd *Downing* if he knew what he did; that *Downing* anſwer'd, 'twas a Truth, and ſaid he did it for Mrs. *Cellier*, who ſent him Copies, ſometimes by one Meſſenger and ſometimes by another; and *Downing* ſaid he ſent the Sheets to Mrs. *Cel-*

Page 577.

Mrs. *Cellier*; and depos'd alſo, that he went to Mrs. *Cellier*, who ſaid, ſhe dictated it to a Man that ſhe kept to write it, and ſhe was the Author; and the Deponent inform'd the Secretary.

Cellier. I never ſaid ſo in my Life.

Stevens farther depos'd, That (ſeeing Mrs. *Cellier* write a Note) he ſaid, I perceive (by the Difference betwixt the Note and the Copy) it's not your Hand-writing; and that ſhe then ſaid, ſhe dictated it to a Man that ſhe kept to write it, and that ſhe own'd her ſelf to be the Author before the Secretary, and before the Council, and ſaid ſhe wou'd anſwer't; and depos'd, ſhe had put out two Sheets ſince, and had ſpoke to the Hawkers to come for a new Pamphlet at one a-Clock this Day, and that he had ſeen her ſell ſeveral of theſe Books.

Mr. *Fowler*, of the *Half-Moon* in *Cheapſide*, was ſworn.

Mr. *Dormer.* Did you buy any of theſe Books?

Fowler. Being inform'd my Name was in her Book, I went to her Houſe and bought two of 'em.

Cellier. I don't know you, nor ever ſaw you before.

Fowler. Yet you cou'd put me in your Book.

Cellier. Your Name is not in the Book.

Fowler. There is one *F.* that keeps the *Half-Moon* Tavern in *Ch. Si.*

Mr. Attorney. Is what is there ſuggeſted of your going to a Man in Priſon true?

Fowler. That's clear'd by *Corral* the Coachman's Oath; I alſo made Oath before my Lord Mayor that I never was there with any great Lord or Duke, nor ever ſaw ſuch Things, or whiſper'd what I am there tax'd with.

Mr. Baron *Weſton.* But I come nearer to you: Was *Corral* apprehended for carrying away the dead Body of Sir *Edmundbury Godfrey* at your Acculation.

Fowler. The *Tueſday* Se'night after the Murder of Sir *Edmund-bury Godfrey*, this *Corral* was call'd to carry ſome Gentlemen from my Houſe; and my Wife accidentally ſaying to him, I believe thou haſt

Page 578. *Fowler's* Evidence of what *Corral* the Coachman told him concerning Sir *E. Godfrey.*

haſt no Hand in the Plot, the Fellow anſwer'd, 'twas well he eſcap'd that Danger, for that four of them met him againſt St. *Clement*'s Church Wall, and ſwore, Damn them, he ſhou'd do as they'd have him; and ſaid, he ſaw Sir *Edmund*'s Body in a Chair; that he pretended his Axle-Tree was broke, and cou'd not carry him. I aſk'd the Fellow if he was ſure of this, and (he repeating the Story) I enquir'd if he drove for himſelf or another, he (imagining he had ſaid too much) pretended to ſee if his Coach-Seats were ſafe; I follow'd with a Candle and took the Number of the Coach, and he drove away; whereupon, the next Day I acquainted Captain *Richardſon* of it, and he ſent his People abroad, who took and ſecur'd the Coachman in *Newgate*: The Day after I was order'd to wait on ſeveral Lords and the Secretary at *Wallingford-Houſe*, where I depos'd the ſame I have now done to your Lordſhips, and the Fellow (confeſſing the Matter) pretended a Coachman and Mrs. ——— told it him, who, being ſent for, were Perſons of good Repute; and the Lords (being ſatisfy'd 'twas a Sham) told the Fellow, if he'd confeſs, he ſhou'd be ſure of the Gratuity the King had promis'd, but if not, he ſhou'd be ſeverely puniſh'd, and was remanded to *Newgate*; but I never was to ſee him, nor ever was in *Newgate* with any Nobleman except my Lord *Petre* four Years ago.

Page 579. *Cellier.* I did'nt write this was true, but that the Fellow told me ſo.

Mr. Baron *Weſton.* That we will ſee. Tho' this Examination be not to the preſent Purpoſe, it may be ſatisfactory: Read the Book. [which was done by the Clerk.]

Mr. Baron *Weſton* obſerv'd the Slander and Infamy this Book caſt on the King, the Nobility, and likewiſe on the whole Nation; and that (if poſſible) he wou'd have 'em produce *Prance* and the Coachman to teſtify their Uſage, and confute that publick Calumny; and aſſur'd Mrs. *Cellier* that the Proteſtants were better Subjects, and far greater Sufferers for their Loyalty, than any Papiſts whatever, tho' ſhe inſinuated the contrary.

Cellier.

Cellier. I ſay, *that call'd themſelves Proteſtants*; I'm ſenſible the Proteſtants ſuffer'd, my Family were ſo, and ſeveral Times ſtript and plunder'd, I acknowledge it.

Mr. Baron *Weſton* ſaid, That either ſhe was an impudent Liar, or had a villainous lying Prieſt to inſtruct her, to uſe ſuch a malicious Aſſertion againſt the Proteſtant Religion; and that a Libel (tho' true) is puniſhable; yet, he ſaid, 'twou'd be ſatisfactory to the Court to diſprove her Allegations, in Order to the ſetting a Fine.

Prance was ſworn.

Mr. Baron *Weſton.* Mr. *Prance*, pray, were you tortur'd in Priſon?

Prance. No, my Lord, I had every Thing fitting, Captain *Richardſon* took great Care of me.

Mr. Baron *Weſton.* Indeed the Accuſation anſwers it ſelf, for 'twas impoſſible for a Man, who had been tortur'd on a Rack, to be able to walk preſently after with Irons on his Leggs.

Mrs. *Cellier.* I don't ſay it was ſo, but was ſo reported.

Francis Corral was call'd, but did not appear.

Captain *Richardſon.* They have kept him away; he promiſs'd to come; but here's his Wife; who was ſworn.

She depos'd, That ſhe carry'd her Huſband Proviſions, but was not permitted to ſee him when he was on the Maſter's Side, but about a Fortnight after ſhe ſaw him with great Fetters on, which made her imagine he had murder'd ſome body; and the Jaylors ſaid, they put on the Irons to keep his Legs warm, but ſhe was never beaten for ſupplying him. Page 580. *Corral's* Wife examin'd.

Lord Mayor. Her Huſband hath deny'd all before me upon Oath.

Mrs. *Cellier.* Had he not Holes in his Legs?

Mrs. *Corral.* Yes, a great many, as thoſe who brought me Salve can teſtify.

Captain *Richardſon.* I have never an Iron weighs twelve Pounds.

Mr. Baron *Weſton.* They ſay you have thoſe call'd Sheers weigh forty Pounds.

Captain *Richardſon.* I'll be hang'd if there be ſuch a one.

Mrs. *Cellier.* Did not your Huſband tell me how heavily he was fetter'd, and chain'd to the Floor with a Chain of a Yard long, and forc'd to drink his own Water.

Mrs. *Corral.* I can't remember, and my Huſband is ſometimes mad, and knows not what he ſays.

Mrs. *Cellier.* Didn't you tell me Captain *Richardſon* drove you away, and prevented your giving Victuals to your Huſband?

Mr. Baron *Weſton.* This is only Repetition. What affects you, is your endeavouring to perſwade the World *Prance* was tortur'd into a Confeſſion, and mad when he did it.

Mrs. *Cellier.* I can't ſay any thing without my Witneſſes: Call *George Grange.* [Who was ſworn.]

He depos'd, He went to call Mrs. *Sheldon* and Mr. *Curtis,* but cou'd find neither of 'em.

Mr. *Dormer.* By the Oath you have taken, Hath ſhe ſold any of theſe Books?

Grange. I know ſhe hath ſold ſome.

Mrs. *Cellier.* Call *Mary Smith* [who not then appearing] ſhe deſir'd *John Clerk* might be ſent for from Goal, [who being in Execution for Debt, the Court ſaid, he cou'd not be brought without a *Habeas Corpus,* becauſe ſome Part of the Way being out of the Rules, 'twould have been an Eſcape.]

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Mr. Baron *Weſton.* What would he prove?

Mrs. *Cellier.* That he was ſheer'd with long Sheers, and unreaſonable Irons.

Mr. *Collins* (her Council) You cannot prejudice your ſelf more than by talking thus.

Lord Mayor. You are not indicted for the whole, but for ſome Part of your Book.

Mr. Attorney. She keeps the Coachman away, and now will tell you what he ſaid.

Mrs. *Cellier.* Let his Wife ſpeak to that, ſhe knows I did not ſend him away.

Captain *Richardſon.* She gave 'em Money before, and ſaid ſhe wou'd maintain 'em.

Mr. Baron *Weſton.* Call her. [But ſhe was not examin'd.]

Mrs. *Cel-*

Mrs. *Cellier.* I desire *Mary Johnson* may be call'd.

Mr. Baron *Weston.* What will she prove?

Mrs. *Cellier.* That she went for Witnesses, in Order to my Defence.

Mr. Baron *Weston.* What signifies it, if they are not come?

Mrs. *Cellier.* I cannot make so good a Defence as I should, if I had been allow'd Time to produce my Witnesses; I thought I might have justify'd the publishing what others have told me, so beg your Lordship will impute the Offence (if any) to my Ignorance.

Mr. Baron *Weston.* You ought to have observ'd, his Majesty has set out a Proclamation to prohibit the Printing of Books without License.

Mrs. *Cellier.* I never heard it, and desire my Council may speak for me.

Mr. *Collins.* I have nothing to say, and it had been better if you had said less your self.

Mr. Baron *Weston.* What can the Council say, when the Matter of the Indictment is prov'd, unless you cou'd disprove the Evidence: Tho' she bears the Name, I believe more were concern'd in composing the Book, and am convinc'd some malicious Priests were the Authors; if she wou'd discover her Accomplices, it might be a Step towards the Mitigation of her Fine; otherwise, if she will take it on her self, she must suffer for it.

Mrs. *Cellier* urges the Services her Family had done the Crown.

Mrs. *Cellier.* His Majesty acknowledg'd (before the Council) I had suffer'd for him; I ventur'd my Life thro' a Sea and an Army to serve him; I lost in one Day both a Father and a Brother in his Service, and beg you'll commiserate me at least for my loyal Parents Sake, who lost their Estates for him.

Mr. Baron *Weston.* His Majesty (without doubt) has made you Recompence according to your Deserts; but we must act according to the Rules of the Law. Then Mr. Baron *Weston* directed the Jury, wherein he tells them, that torturing Criminals was illegal, and had never been practis'd since the 20th of Q. *Eliz.* when *Campion*, the Jesuit, was examin'd on the Rack.

Page 582.

The Rack us'd in *England* since Queen *Eliz.*

[The Jury desir'd to have the Book with 'em, which the Prisoner (after some Pause) refus'd to consent to.]

Mr. Baron *Weston*. Then they can't have it by Law.

Page 584. *Mrs. Cellier* convicted.

[The Jury withdrawing for a small Time, brought in their Verdict, That she was guilty of the Writing, Printing, and Publishing.]

Mr. Baron *Weston* said, That according to the Custom of the City, the Recorder or his Deputy must give Judgment, and what she had to say must be deferr'd 'till *Monday*, the End of the Sessions, and she was committed.

Her Sentence.

Monday the 13th of *September*, she was brought to the Bar, and Mr. Recorder (Sir *George Jefferies*) gave Judgment, that she shou'd be fin'd 1000 *l.* and committed in Execution till Payment, stand three Times in the Pillory, and find Sureties for Good Behaviour during Life; some Parcels of the Books burnt in her View by the common Hangman, and a Paper of the Cause put on the Pillory.

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The Tryal of WIL. *Vicount* STAFFORD, *before the House of Peers, on an Impeachment of the Commons for High Treason, the* 30*th of* November, 32. Car. 2. 1680.

Five Popish Lords impeach'd.

William, Earl of *Powis*, *William*, Vicount *Stafford*, *Henry*, Lord *Arundel*, of *Wardour*, *William*, Lord *Petre*, and *John*, Lord *Bellasis*, having been impeach'd by the Commons of High Treason and other High Crimes, and the Commons having, by a Message, acquainted the Lords that they wou'd begin with the Tryal of the Lord Vicount *Stafford*, and desir'd their Lordships to appoint a convenient Day for the Tryal, the Lords appointed the 30th Day of *November*, 1680, for the Tryal. And a Court was erected in *Westminster Hall*, correspondent to the Lords House, for that Purpose; and Benches of several Degrees were

The Commons signify their Intention of beginning with the Tryal of the Lord *Stafford*.

The Day for the Tryal appointed by the Lords.

were erected on each Side for the Commons, *&c.* And the Right Honourable *Heneage*, Lord *Finch*, Lord Chancellor, was conſtituted Lord High Steward.

Lord *Finch*, Lord High Steward.

On the 30th of *November*, the Lord Chancellor came to the Houſe of Lords, being attended as Lord High Steward, where the Lords were aſſembled in their Robes, and the Biſhops in their Rochets; and Prayers being ended, and his Lordſhip's Commiſſion of High Steward being read, the Biſhops withdrew, and the Temporal Lords adjourn'd to their new erected Court in *Weſtminſter Hall*: Where being ſeated in their Places, and the Commons on each Side of them bare, Proclamation was made for Silence, and for the Lieutenant of the *Tower* to bring forth his Priſoner: Then the Lord *Stafford* was brought to the Bar, and made to kneel: After which the Lord High Steward bid him riſe up, and made a Speech to this Effect.

The Biſhops withdraw.

Page 594.

The Tryal begins.

He acquanted the Priſoner, That altho' an Indictment had been found againſt him by the Grand Jury for High Treaſon, he was now to be try'd upon an Impeachment, on the loud Complaints of the Commons, who were the Grand Inqueſt of the Nation: That he was to be try'd by the whole Body of Peers, the nobleſt Court in the Chriſtian World: That here the Ballance wou'd be exactly kept, and all due Allowances made that the Caſe wou'd bear; but if his Lordſhip had been agitated with a reſtleſs Zeal to promote the Catholick Cauſe, and was engag'd in the black Deſigns he was charg'd with, he muſt expect to reap what he had ſown: But told him, he ſhou'd have a fair and equal Hearing.

The Lord High Steward's Speech.

Then the Articles of Impeachment againſt the five Lords were read, which were to this Effect:

1. That there had been, for many Years, a traitorous and execrable Conſpiracy carry'd on by Papiſts, to ſubvert the ancient Government and Laws of this Kingdom, and ſuppreſs the true Religion.

The ſeven Articles of Impeachment read.

2. That the ſaid five Lords, together with divers Jeſuits, and other falſe Traitors, had traito-

rously agreed, conſpir'd, and reſolv'd to depoſe and murder his ſacred Majeſty, in Order to accompliſh their traitorous Deſigns; and by malicious and advis'd Speaking, Writing, and otherwiſe, had declar'd ſuch their Purpoſes and Intenſions: And alſo had contriv'd to ſubject this
Page 595. Kingdom to the Pope, and ſhare among themſelves the Eſtates of his Majeſty's Proteſtant Subjects: To reſtore Religious Houſes, and the Lands belonging to them, and to erect new, and to deprive all Proteſtant Biſhops, and other Eccleſiaſtical Perſons, of their Offices and Preferments.

3. That they had held ſeveral Conſultations, what Inſtruments ſhou'd be us'd to murder his Majeſty, and had reſolv'd to affect it by poiſoning, ſhooting, ſtabbing, or ſuch like Means; and hir'd ſeveral Perſons to go to *Windſor*, and other Places where his Majeſty reſided, to murder him; and the Aſſaſſins had accepted their Rewards, and undertaken it, and gone to thoſe Places for that Purpoſe.

4. That they had conſulted to raiſe, and actually had raiſed Men, Arms, *&c.* and treated with the Pope, his Nuntios, and other foreign Miniſters, for Supplies of Mony, Arms, *&c.* to levy War and Rebellion within this Kingdom, and deſtroy his Majeſty's Fortreſſes, Magazines, Ships, *&c.* whereby the Ruin and Deſtruction of this Nation muſt inevitably have enſu'd.

5. That they had procur'd and accepted ſeveral Commiſſions for Civil and Military Employments from the Pope.

6. That, to conceal their Treaſons, they had caus'd their Prieſts to adminiſter an Oath of Secrecy to the Conſpirators, and give Abſolutions on Condition they wou'd conceal the ſaid Conſpiracies. That they had caus'd Sir *Edmundbury Godfrey*, who had taken ſeveral Examinations relating to this Conſpiracy, to be murder'd, and given out he was alive and privately marry'd; and after the Body was found, had maliciouſly reported, That he murder'd himſelf: Which Murder was committed with Deſign to deter all

Magiſtrates

Magiſtrates from making farther Enquiry into their Treaſons.

7. That they had contriv'd to lay the Imputation and Guilt of their ſad horrid Crimes upon the Proteſtants, that they might eſcape Puniſhment themſelves, and expoſe the Proteſtants to Scandal and Perſecution in all Popiſh Countries.

All which Treaſons and Crimes were done againſt the King's Peace, his Crown, and Dignity, *&c.* Of all which Treaſons, *&c.* the Knights, Citizens, and Burgeſſes, in Parliament aſſembled, did impeach the ſaid Lords, and every of them, in the Name of all the Commons of *England*, ſaving to themſelves the Liberty of exhibiting any other Accuſations againſt the ſaid Lords, and of replying, *&c.* and pray, they may be put to anſwer the Premiſes; and that ſuch Tryals and Judgments may be had thereupon as is agreable to Law and Juſtice, and the Courſe of Parliaments. Page 596.

To which Articles the Lord *Stafford* put in a general Anſwer, That he was not Guilty of any of the Offences charg'd againſt him by the ſaid Impeachment, and put himſelf upon his Peers, not doubting of their impartial Juſtice.

The Lord *Stafford* anſwers generally that he is Not Guilty.

L. C. J. Gentlemen of the Houſe of Commons, pleaſe to proceed.

Then Mr. Serjeant *Maynard*, one of the Managers for the Houſe of Commons, open'd the firſt Part of the Charge, and ſhew'd, in general, that there was a Plot; becauſe, he ſaid, he obſerv'd there had been Endeavours uſed to make it believ'd that it was only a State Trick, a mere Chimera, and nothing of Reality in it.

Mr. Serj. *Maynard* ſhews that there was no Improbability the Papiſts ſhou'd enter into ſuch a Plot.

And firſt, he ſaid, There was no Improbability the Catholicks ſhou'd be in a Plot now, in Order to propagate their Religion, becauſe the Hiſtories of all Times, and of all Countries, and particularly our own, afford many Inſtances of ſuch Plots carry'd on by them; as the many Plots in the Reign of Queen *Elizabeth*, when they were in Expectation of a Popiſh Succeſſor, and afterwards the Powder Plot, in the Reign of King *James*, did manifeſt.

That another Thing which might induce a Belief of this Plot, was their Murder of Sir *E. Godfrey*, who had taken the Examinations of the Plot.

Page 598. And a third Thing, which he said might induce People to believe it, was the many Endeavours that had been us'd to seduce and tamper with the Witnesses, or blast their Characters.

Then Sir *Francis Winnington*, another of the Managers, proceeded to open the Particulars of the Charge, and premis'd, that he look'd upon the Cause of this Day to be the Cause of the Protestant Religion.

Sir *Fr. Winnington* shews how probable it was there shou'd be such a Plot at this Time.

1. He said, he wou'd shew the Advantages and Encouragements the Papists had at this Time to enter into this Conspiracy, (*viz.*) That those who were Papists at the Bottom, or carry'd on their Interest, had crept into the King's Councils, and that tho' some of them had been detected and discharg'd, as ill Men had succeeded them.

2. That Men were grown too easy and favourable to Papists; and Projects for reconciling us with them had been lately set on Foot, and advanc'd in Print.

3. That the Ministry prevented the Execution of the Penal Laws against the Papists, against whom they were made, and turn'd them upon the Protestant Dissenters; and by that Means weaken'd and divided the Protestant Interest.

Page 599. But that the greatest Encouragement they had to enter upon this detestable Conspiracy was, the Prospect of a Popish Successor: That his present Majesty's Firmness to the Protestant Religion frustrated all their Hopes of re-establishing their Religion while he liv'd, and therefore, like true Papists, they wou'd stick at nothing; they wou'd throw off all Obligations of Loyalty and Allegiance, and destroy him.

That as to the Proof of the Plot in general, he thought the several Attainders of the Jesuits, of *Langhorn*, and *Coleman*, and of the Murderers of Sir *E. Godfrey*, were sufficient Evidence of that. That it was confirm'd by the Conviction of *Reading* for tampering with *Bedloe*; by the Conviction of *Knox* and *Lane*, who were suborn'd to swear

Buggery

Buggery againſt *Otes*; and the Conviction of *Taſborough* and *Price* of endeavouring to corrupt *Dugdale*, another principal Witneſs: Then he proceeded to ſhew the Nature and Courſe of the Evidence againſt this Lord in particular; and concluded, That as their Lordſhips Anceſtors had, by their Honour and Juſtice, preſerv'd the Anceſtors of the Commons, that they did not doubt but their Lordſhips wou'd tread in their Steps. That they had now in their Hands a great Opportunity of making their Zeal for Truth and for the Proteſtant Religion famous to Poſterity; and no Artifice or Malice cou'd create the leaſt Jealouſy in them, that their Lordſhips wou'd ſhew any Injuſtice to the Commons of *England*; and therefore to their Judgment this Cauſe was ſubmitted, and when they had their Lordſhips Judgment, they did not doubt but they ſhou'd drive Popery out of this *Engliſh* World.

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The Managers call their Witneſſes to prove the Plot in general.

Mr. *Treby*. We ſhall begin with a Witneſs whoſe Education has given him an Opportunity of being acquainted with the Inſide of their Affairs: It is Mr. *John Smith*.

L. C. J. What, do you call him to, Gentlemen?

Mr. *Treby*. To the general Plot, My Lords.

The Priſoner deſir'd that this Witneſs, and the reſt, might look him in the Face, and that the Witneſſes might give their Evidence ſeparately, and the one not know what the other ſaid; and was anſwer'd by the Lord Chief Juſtice, that he ſhou'd have all the fair Dealings imaginable.

Then Mr. *Smith* was ſworn, and directed to look upon my Lord *Stafford*.

He depos'd, That when he went firſt over to *France*, Abbot *Montague*, Father *Gaſcoigne*, and others, endeavour'd to perſwade him to turn Catholick, and to induce him to do it, told him, the Catholick Religion wou'd ſoon be brought in in *England*; and aſking the Abbot what Reaſon he had to believe it wou'd, he anſwer'd, he did not doubt but they ſhou'd procure a Toleration by which they ſhou'd bring it in without Noiſe, and that the *Engliſh* Gentlemen, who

travell'd

travell'd, did obſerve the Novelty of their own Religion and the Antiquity of theirs, and the Advantages that were to be had by it: And that one Father *Bennet* told the Deponent, their Party was very ſtong in *England*, and in a few Years they wou'd bring her in right or wrong: But that the Deponent was not prevail'd with to change his Religion till he met with Cardinal *Grimaldi* as he was on his Way to *Rome*, and the Cardinal perverted him to the Romiſh Religion: That the Cardinal told him, he was acquainted with many of the *Engliſh* Nobility, and had great Aſſurance that the Popiſh Religion wou'd prevail; that there was but one Man in the Way, and tho' he was a good natur'd Man they cou'd not prevail upon him, but to accompliſh their Deſigns, they muſt take him out of the Way: That the Deponent, afterwards, came to *Rome*, and liv'd in the *Engliſh* Jeſuits College there five Years, where, in their Sermons and private Exhortations they maintain'd, that the King of *England* was an Heretick, and that there was really no King remaining, and whoever took him out of the Way wou'd do a meritorious Action: That, particularly, Father *Anderton*, Rector of the College, the Fathers, *Mumford*, *Campion*, and *Southwell*, held this Doctrine; and the Deponent doubting the Truth of this Opinion, they directed him to ſome Paſſages in *Mariana Vaſques*, and *Bellarmine*, (which he had ſince publiſh'd) wherein they did aſſert this Doctrine, and that it never was condemn'd at *Rome*: That when the Deponent, and four or five others, left *Rome*, the Fathers aſſur'd them, that they were not oblig'd to obey the King of *England*, and that in all private Confeſſions they ſhou'd exhort the People, who were capable of any Deſign, to uſe all their Endeavours for promoting the Popiſh Religion: That at *Rome* the Deponent read *Coleman*'s Letters once a Month, who gave them Intelligence what happen'd at Court, how the Duke, and the Queen, and the chief of the Nobility, were on their Side, and how they carry'd Matters ſeveral Times; the Methods my Lord *Clifford* and Sir *William*

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William Godolphin took to effect the Work, and that they did not doubt but they ſhou'd get my Lord Treaſurer *Danby* on their Side too: That when the Deponent return'd to *England*, he found the Popiſh Clergy of the ſame Opinion here, that their Religion wou'd ſoon come in: And he obſerv'd they were raiſing Money in the North of *England*, which he believ'd was for promoting this Deſign: That he knew nothing of the Priſoner, my Lord *Stafford*, but that one *Smith*, who was one of thoſe who contributed Money, writ a Letter up to my Lord *Stafford* to complain of two or three Juſtices of Peace that were active againſt Popery, upon which one of them [Sir *Henry Calverly*] was turn'd out. That *Smith* told the Deponent he had written another Letter to my Lord, to know if he wou'd convey his Eſtate away, and if he apprehended they were in Danger; and *Smith* ſaid my Lord anſwer'd, that ſeveral did do ſo, but he wou'd not, for he expected a ſudden Change; and he ſaid, my Lord was ſo wiſe a Man, he wou'd not write ſo without ſome Ground. That Fathers *Anderton* and *Southwell* uſed to ſay at *Rome*, that the King was a good Man, but he was not for their Turn, and he was was the only Man that ſtood in their Way. Page 603.

Mr. *Treby*. Did they name the King?

Mr. *Smith*. Yes, it was the common Diſcourſe all over the Country.

Mr. *Treby*. Pray, what have you heard of their firing the City?

Mr. *Smith*. The Papiſts, beyond Sea, uſed to deny that they did, but ſaid it came accidentally in a Baker's Houſe; but they uſed to ſay, it was no great Matter if it had been all burnt. The Opinion of the Papiſts, as to the Fire of *London*.

Lord *Stafford*. I deſire to know how long it is ſince this Witneſs was made a Prieſt?

Sir *Francis Winnington*. No Man need anſwer a Queſtion whereby he ſhall accuſe himſelf. Where one conforms before Proſecution, he ſhall not be queſtion'd for having been a Popiſh Prieſt.

L. H. S. I will aſk him a Queſtion: Are not you a Proteſtant?

Mr. *Smith*. I have been a Proteſtant near two Years, and I was perverted about ſix or ſeven Years before; I was bred a Proteſtant.

L. H. S. It

L. H. S. It is not criminal to have been a Prieſt, if he has conform'd.

Mr. *Dugdale* was ſworn.

Mr. *Treby*. We call you now only as to the general Part of the Plot, to tell us what Diſcourſes you have heard from the Prieſts about it.

Dugdale. I have known theſe fifteen or ſixteen Years, that there has been a Deſign carrying on for bringing in the Popiſh Religion; and my Confeſſor, Mr. *Ewers*, has acquainted me, that there were ſeveral Lords and Prieſts in ſeveral Parts of *England* concern'd in the Deſign: That they were to have Money, and Arms in Readineſs for thoſe that wanted, againſt the Death of the King. I have ſeen ſeveral Letters from *Paris*, *Rome*, and St. *Omers*, to Mr. *Ewers*, (for they were directed to me) to encourage thoſe who were engag'd; and Mr. *Ewers* has ſent me with ſeveral Letters and Meſſages, importing, that all ſhou'd be ready with Money and Arms againſt the King's Death; for I heard nothing, 'till of late, about killing the King: And I ſaw a Letter from my Lord *Stafford* from beyond Sea, importing, That all Things went on well beyond Sea, and he hop'd they did here: And I ſaw ſome Letters which came from *Paris* to St. *Omers*, and from thence to Father *Harcourt*; the Subſtance whereof was, That the likelieſt Way to do the Work, if the King ſhou'd die ſuddenly, was to throw it upon the *Presbyterians*, who had kill'd the old King, and ſo the Church of *England* might be brought to join with them againſt the *Presbyterians*: And *Harcourt* had communicated theſe Letters to ſome Lords to have their Opinions, and this Advice was approv'd: I have of late been at ſeveral Conſultations with Prieſts and others, for introducing their Religion, and taking off the King, which they intended ſhou'd be in *November*, *December*, or *January* 78: And there was a general Collection of Money for carrying on the Deſign: I have been ſent to Mr. *Gavan Vaveſor*, and other Jeſuits, for Money; I receiv'd 500 *l.* and paid it to Mr. *Ewers* at one Time, and he return'd it to *London* to pay for Arms, and Things receiv'd from be-

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yond

yond Sea: And it was agreed that my Lord *Aſton*, Sir *James Symonds*, and others, ſhou'd go in *October* 1678, to diſpoſe of the Arms which they had receiv'd from beyond Sea, to the Value of 30000 *l.* as I have heard; and I have heard from *Gavan* and *Ewers*, that they were to have Men rais'd there as well as here; and that the *French* King wou'd furniſh Men, and wou'd not be wanting with other Aid, if the King ſhou'd die: And I have been employ'd to make Foot Races, that the Conſpirators might meet without Suſpicion: For theſe two Years, the Letters relating to the Plot, have come thro' my Hands; and one of them, about the Death of Sir *E. Godfrey*, when I carry'd it to Mr. *Ewers*, he ſaid, there was one of our Enemies taken out of the Way: That Letter was dated the 12th of *October*, the Day he was murder'd, and I receiv'd it on *Monday* the 14th; and it had this Expreſſion, *This Night Sir* E. Godfrey *is diſpatch'd.* I ſaid this wou'd ruin the Deſign, but Mr. *Ewers* reply'd, It wou'd be thrown upon ſome debauch'd Perſons he had been active in puniſhing: And Mr. *Ewers* told me the Reaſon they took off Sir *E. Godfrey*, was, That the Duke of *York* having ſent a Meſſage to Mr. *Coleman*, not to reveal what he knew concerning the Plot, and *Coleman* anſwering, he had been ſo fooliſh to reveal all to Sir *E. Godfrey*, who had promis'd to keep it ſecret, but he was afraid he wou'd come in Evidence againſt him: The Duke aſſur'd him again, if he wou'd but conceal the Plot, Sir *E. Godfrey* ſhou'd not come in Evidence againſt him; and the next News I heard was, that he was diſpatch'd.

My Lord, I was ſo encourag'd to believe there wou'd be an Alteration in the Government, that I contributed an Eſtate of the Value of 400 *l.* towards it, and to pray for my Soul, and did promiſe 100 *l.* more when my Lord *Aſton* and I ſhou'd come to Account: And I know that Mr. *Hevening-ham*, Sir *James Symonds*, my Lord *Aſton*, Mr. *Dray-cot*, Mr. *Howard*, and Mr. *Gerard*, did alſo contribute Money: And I have ſeveral Times been brought under an Oath of Secrecy, and particularly

larly on the 18th or 15th of *November*, when I left my Lord *Aſton*'s, in order to abſcond, I took the Sacrament, in Mr. *Ewers*'s Chamber, not to diſcloſe the Plot; tho' I have been advis'd ſince, that ſuch Oaths were better broken than kept, and thereupon diſcover'd it: And I can take upon me to ſay, my Lord *Stafford* has been preſent at Conſults, where the introducing their Religion, the buying of Arms, and the Death of the King, has been under Conſideration.

And farther, In the Year 78, there was an Indulgence came from beyond Sea, and thro' Mr. *Ireland*'s Hands, to Mr. *Ewers* and Mr. *Gavan*; and Mr. *Gavan* publiſh'd it at *Boſcobel*, as it was alſo in all private Chapels, That whoever was active in the introducing the Romiſh Religion, or killing the King, ſhou'd have free Pardon of all his Sins.

Mr. *Foley*. What Arguments have been us'd to prevail with you to undertake this Deſign?

Mr. *Dugdale*. They told us at their Meetings, that the King was an excommunicated Heretick, and out of the Pale of the Church, therefore it was lawful to kill him; and that it was no more than the killing of a Dog: And I have heard, that about the Time the King ſhou'd be kill'd, ſeveral were to be provided with Arms, and riſe at an Hour's Warning, and cut the Proteſtants Throats; and if any eſcap'd, there ſhou'd be an Army to cut them off.

Mr. *Treby*. Did you ever know or hear of *Otes*, or *Bedloe*, 'till the Plot was detected?

Mr. *Dugdale*. I have heard by the Prieſts, that they were Meſſengers entruſted by them, but no otherwiſe.

Mr. *Treby*. My Lord, the Reaſon of this Queſtion is, They charge the Papiſts with a Plot, and the Papiſts charge our Witneſſes with a Conſpiracy againſt them; now we ſhow that Mr. *Dugdale* had no Knowledge of the other Witneſſes, and ſo there cou'd be no Contrivance amongſt them.

Page 605. Sir *John Trevor*. What People did *Whitebread* direct *Ewers* to employ in this great Deſign?

Dugdale. He writ Mr. *Ewers* Word, It was no Matter whether they were Gentlemen, ſo they were ſtout and truſty.

L. H. S. What ſhou'd they be truſty for?

Dugdale. For the killing of the King.

L. H. S. Was that ſaid plainly in the Letter?

Dugdale. To the beſt of my Remembrance, thoſe very Words. No Cypher or Character was uſed.

Mr. *Treby.* Pray tell us what you did with your Papers and the Letters, that they are not produc'd?

Dugdale. When I was by Mr. *Ewers*'s Directions to take my Flight, I convey'd all my Papers which belong'd either to him or myſelf, concerning the Plot, to a Houſe not far from my Lord *Aſton*'s; and there, by the Help of two Maids, *Elizabeth* and *Anne*, who prepar'd a Fire in their Chamber for that Purpoſe, I burnt them.

Mr. *Foley.* What Aſſiſtance was the Pope to give for carrying on this Deſign?

Dugdale. I heard he promis'd ſeveral Sums; and particularly that he wou'd aſſiſt the poor diſtreſſed *Iriſh* with Men and Money.

Lord *Stafford.* What Sums did the Pope contribute?

Dugdale. I have heard about 10000 *l.* and was told by one that was my Lord *Stafford*'s Servant, that the Pope's Income was 24000 *l.* a Day; and that if he wou'd do as he had promis'd, he was able to do very much.

Prance was ſworn.

He depos'd, That he was at a Cook's in *Ivy Lane*, with one *Singleton* a Prieſt, in 78, and he told the Deponent, He did not fear but he ſhou'd be Prieſt of a Pariſh-Church in a little Time, and that he wou'd make no more to ſtab forty Parliament Men, than to eat his Dinner.

Otes was ſworn.

Mr. *Treby.* We deſire him to ſpeak only to the General Deſign, at preſent.

Otes. In the Year 76, I was Chaplain in the Duke of *Norfolk*'s Houſe, (being then a Miniſter of the Church of *England*) and there I became acquainted

acquainted with one *Bing*, who was a Prieſt in the Houſe, and *Kemiſh* and *Singleton*, two other Prieſts, uſed to viſit him: *Singleton* told me, The Proteſtant Religion was upon its laſt Legs; and that it wou'd become me and all Men of my Coat, to haſten Home to the Church of *Rome*. My Lords, having for ſome Years ſuſpected the Growth of Popery, to ſatisfy my Curioſity, I pretended ſome Doubts, but I found theſe were Regulars, and had very little Learning: Afterwards, I met with one *Hutchinſon*, and he was a Saintlike Man, one that was religious for Religion's Sake, but he was not for my Turn neither, for I wanted to deal with their Caſuiſts: But he introduc'd me to one of the Society, and theſe I found to be cunning politick Men, and thoſe that cou'd ſatisfy me: After I had had ſome Diſcourſe with them, I pretended to be convinc'd: And on *Aſh-Wedneſday* 1676 was reconcil'd: *Strange*, who was then Provincial of the Jeſuits, told me, Now I muſt lay down my Miniſtry, for my Ordination was invalid: Then I deſir'd I might be admitted a Novice of their Order; and after ſome Conſideration, I was admitted: And they propos'd my travelling beyond Sea on their Buſineſs, which I agreed to; and accordingly, in *April* 77, I ſail'd for *Bilboa*, with their Letters of Recommendation; and from thence I went to *Valladolid* in *Caſtile*; but, by the Way, I open'd certain Letters, which mention'd a Diſturbance deſign'd in *Scotland*; and wherein was expreſs'd their Hopes of effecting their Deſign in *England*. But before I arriv'd at *Valladolid*, there were Letters come thither, that the King was diſpatch'd; but there came Letters afterwards to contradict it, and deſire the Fathers to ſtifle the Report: And ſome Letters in *June* ſaid, They had procur'd one *Beddingfield* to be Confeſſor to the Duke of *York*; and that he had aſſur'd them of the Duke's Readineſs to comply with them in advancing the Catholick Religion: And I found the Provincial of the Jeſuits in *Caſtile* had, by his Induſtry, rais'd 10000 *l.* which was to be ſent to *England*: In *December* ſome Miſſionaries arriv'd in *Spain*, with twelve

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Students;

Students; and, at their coming, Father *Mumford* (alias *Armstrong*) preach'd them a Sermon, wherein the Oaths of Allegiance and Supremacy were declar'd to be antichristian, heretical, and deviliſh, and the King's Legitimacy queſtion'd; and it was ſaid, his Religion entitled him to nothing but Death and ſudden Deſtruction; for that he appear'd an Enemy both to God and Man. In the Month of *November*, as I was order'd, I came for *England*: (and was lodg'd at one *Grigſon*'s in *Drury-Lane*, 'till I went o St. *Omers*) I carry'd the Letters I brought from the Provincial of *Caſtile*, to *Strange* the Provincial here; and Father *Keins* being ill, he was lying upon *Strange*'s Bed, and was ſaying, he was ſorry for honeſt *William*, (ſo *Grove*, the Ruffian who was to kill the King, was call'd) that he had miſs'd his Enterprize: They had ſeveral Times attempted the King's Life ſince the Fire of *London*, but were more zealous for it ſince *Coleman* had been deny'd the Diſſolution of the long Parliament. In *December*, N. S. I left *England*; and, about the 9th or 10th, came to St. *Omers*: In the Letters I carry'd from *Strange* to the Fathers there, he told them, They had great Hopes of their Deſign taking Effect the next Year, but thought fit to ſuſpend it 'till they ſaw what the Parliament wou'd do: That ſometime after they had a Letter from their new Provincial *Whitebread*: He order'd *Conyers* to preach to the Society on St. *Thomas Becket*'s Day, and told them, he wou'd be as zealous for carrying on the Deſign as his Predeceſſor had been; *Conyers*, in his Sermon, inveigh'd againſt the Tyranny of Princes, particularly of the King of *England*; and declar'd, the Oaths of Supremacy and Allegiance were antichriſtian and deviliſh; and that it was fit to deſtroy ſuch as countenanc'd them.

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We found by Letters from *Ireland*, that the *Talbots* and others were zealous for raiſing Forces there, and reſolv'd to let in the *French* King, if the Parliament urg'd the King to break with *France*; and *Morgan*, who had been ſent as a Viſitor thither, gave an Account how ready the *Iriſh* were to vindicate their Freedom and Religion

from the Oppreſſion of the *Engliſh*. In *March* we had an Account of an Attempt that had been made on the King by *Pickering*, but the Flint of his Gun, or Piſtol, being looſe, the King eſcap'd; for which *Pickering* receiv'd Diſcipline, and *Grove* was chid. In the latter End of *March* there came a Summons from *England* to a Conſult there, and Eight or Nine came from St. *Omers*, *Liege*, and *Ghent*, to the Conſult, and I attended them. In *April*, they met at the *White-horſe* Tavern in the *Strand*, and then adjourn'd into particular Societies, where they debated, and reſolv'd on the King's Death; and *Grove*, one of the Aſſaſſines, was to have 1500*l.* and the other being a religious Man, was to have 30000 Maſſes ſaid for him. After ſtaying in Town a while, we return'd to St. *Omers*; and the Provincial, when I had been there a little Time, order'd me into *England* again, to attend their Affairs; and I arriv'd in Town the 17th of *June*, O. S. and Letters follow'd us, with Propoſals for Sir *George Wakeman* to poiſon the King; and the *Spaniards* 10000*l.* was deſign'd to be offer'd him for that Service: *Coleman* look'd upon it as too little, and thought he ought to have 15000*l.* and *Langhorn* thought it too much, and that he might do ſuch a Service for nothing; and ſaid, he was a narrow-ſpirited Man if he wou'd not engage in it: There was 5000*l.* paid Sir *George*, as I found by the Books; but being ill then, I did not ſee it paid. In *July* Father *Aſhby* came to Town, and going to the *Bath*, was directed to obſerve how the Catholicks ſtood affected in *Somerſetſhire*. About the 26th of *Auguſt*, *Fenwick* went to St. *Omers* to attend the Provincial Home, and gave an Account, that Sir *George Wakeman* had accempted the Propoſal. (I forgot to acquaint your Lordſhips, that *Strange* told me how the City of *London* was fir'd; and that many of the Incendiaries were taken, but were diſcharg'd by the Duke of *York*'s Guards, by the Duke's Order) The latter End of *July* I communicated ſome of theſe Matters to Dr. *Tongue*; and the King had Notice of them the 13th or 14th of *Auguſt*: The 3d of *December*, I was betray'd to theſe Men; ſo

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that

that my Intelligence wholly ceas'd the 8th of *September*, and I was forc'd to keep private; and for the reſt, I refer myſelf to my Examinations before the Lords and Commons.

Mr. *Dennis* was ſworn.

He depos'd, That in *July* 77, he ſaw Mr. *Otes* in the Jeſuits College at *Valladolid*; and, in Converſation, *Otes* told him, that he was a Vicar in *Kent*, and Chaplain to a Great Nobleman in *England*, and that he was converted by the Jeſuits in *England* to the Roman Catholick Faith, and ſent thither to fit himſelf for the Society of Jeſuits: And *Otes* underſtanding he was going to *Madrid*, deſir'd him to carry a Letter thither, to the Archbiſhop of *Tune*, an *Iriſh-man*, and lent the Deponent Money to bear his Charges: That when the Archbiſhop had read the Letter, he ſaid, Smiling, Mr. *Otes* is deſirous to receive the Order of Peieſthood from me; and added, it might be much in their Way, he was a fit Man for their Purpoſe; and ſaid, Dr. *Plunket*, the Primate of *Ireland*, was reſolv'd to bring a *French* Power into *Ireland*, to ſupport the Catholicks in *England* and *Ireland*; and, if it pleas'd God, he wou'd go over to *Ireland* himſelf, to aſſiſt in that pious Work.

Mr. *Foley.* What Religion is he of?

Mr. *Dennis.* I am a Dominican Fryer. Page 609.

Mr. Serj. *Maynard.* He hath a Pardon, my Lords.

Sir J. *Trevor.* I wou'd aſk him if he knows Mr. *Otes* had more Money than he lent him.

Mr. *Dennis.* When he lent me the Money, he pull'd a Bag out of a Drawer, that had a conſiderable Sum in it, and he did not want Money there then, I'm certain.

L. H. S. Have you heard of any Money gather'd in *Ireland* to ſupport this Plot?

Mr. *Dennis.* I have both heard and ſeen it; and the Collectors were *Reynolds* and *Berne*. And I aſk'd why the Money was levy'd? And it was anſwer'd, That that Levy, and ſeveral others, were made to encourage the *French* King, in whoſe Kingdom were ſeveral *Iriſh* Biſhops and

Clergymen, whoſe Buſineſs it was to ſolicit that King to invade *Ireland* when Time ſhou'd ſerve.

Lord *Stafford.* Does this Witneſs profeſs himſelf of the Church of *Rome* ſtill?

Mr. *Dennis:* I am a Roman Catholick ſtill, my Lord.

Then Mr. *Jenniſon* was ſworn.

He depos'd, That in the Beginning of the Year 78, he heard Mr. *Ireland* and Mr. *Tho. Jenniſon*, Jeſuits, ſpeak of a Deſign they had to procure a Toleration, by bribing the Parliament-Men; and that they hoped to ſecure the Duke of *York*'s Succeſſion, by getting Commiſſions granted to thoſe of their Party, to be ready to riſe upon the King's Death: That he has heard them ſay, their Religion cou'd never flouriſh 'till the Government was alter'd after the Model of the *French*: That the Deponent being at Mr. *Ireland*'s Chamber in *June* 78, *Ireland* ſaid, That there was but one in the Way, and it were eaſy for Sir *George Wakeman* to poiſon him: That in *Auguſt* the Deponent was in *Ireland*'s Chamber, and he was pulling off his Boots, being juſt come out of *Staffordſhire*, and the Deponent telling him, his Majeſty went a Fiſhing early in a Morning, accompany'd but by two or three, *Ireland* aſk'd the Deponent, if he wou'd be one of thoſe that wou'd go to *Windſor* to take off the King; and ſaid, he wou'd remit the 20 *l.* the Deponent ow'd him, if he wou'd; but the Deponent refus'd to have any Hand it: Then *Ireland* aſk'd him, if he knew any ſtout *Iriſh-man?* And the Deponent nam'd Capt. *Levallian*, Mr. *Karney*, Mr. *Broghal*, and Mr. *Wilſon*: That *Ireland* ſaid, he knew the firſt two, and approv'd of them, and took the Names of the others in Writing; and ſaid, he was going to a Club to meet *Coleman*, *Levallian*, and *Karney*; and then preſs'd the Deponent to repay him the 20 *l.* He depos'd farther, that when he receiv'd the 20 *l.* he went with his Brother, Mr. *Tho. Jenniſon*, the Jeſuit, to *Harcourt*'s Chamber, to thank the Fathers for the Loan of it; and there Mr. *Tho. Jenniſon* uſed that Expreſſion in *Otes*'s Narrative: *If* C R *wou'd not be* R C, *he ſhou'd not be long* C R; which

Page 619.

which he interpreted thus: *Si* Carolus *Rex non eſſet Rex Catholicus, non foret diu* Carolus *Rex.* And that Mr. *Tho. Fenniſon* ſaid farther, in Diſcourſe about introducing their Religion, That if the King were excommunicated or depos'd, he was no longer King, and it was no Sin to take him off; and if it were diſcover'd who did, two or three perhaps might ſuffer, but the Matter wou'd ſoon blow over: That Mr. *Tho. Fenniſon* alſo told the Deponent, That there was a Deſign on Foot ſo laid, that it cou'd not well be diſcover'd; and that the Queen, the Duke, the Lords *Bellaſis*, *Powis*, and *Arundel*, were concern'd in it; and the Deponent thought he nam'd my Lord *Stafford* too: That he told the Deponent there was a new Army to be rais'd to bring in the Catholick Religion, and he wou'd procure him a Commiſſion; and he wou'd tell him more, after he had receiv'd the Sacrament of Secrecy: But the Deponent underſtood the Army was not to be rais'd 'till the King was taken off: That he heard *Caſſil*, a Prieſt, ſay, that *Bellarmine* held, that the Pope ought to have the ſame Power over Princes that *Jehoida* exercis'd over *Athaliah.*

Mr. *Treby.* Did he ever hear that Mr. *Otes* was in the Plot?

Fenniſon. My Brother, *Tho. Fenniſon*, told me, in *July* 78, that *Otes*, a Perſon newly come over to them, was in the Deſign.

Sir *John Trevor.* Did not you ſee *Otes* in *April*, before the Plot broke out.

Fenniſon. Yes, I ſaw him at *Ireland*'s Chamber the latter End of *April*, or Beginning of *May.*

L. H. S. You ſay you did not know him in *July*, how then can you ſay you ſaw him before?

Fenniſon. I did not know him: I only ſaw him come to *Ireland*'s Chamber, and whiſper two or three Minutes; and they told me it was *Otes*, after he was gone. Page 61 a

L. H. S. Do you know him to be the ſame Man you ſaw then?

Fenniſon. I can't tell that.

Sir *John Trevor.* We deſire he may tell your Lordſhip what his Brother is.

Jennison. My Brother was a Jesuit bred up at St. *Omers.*

L. H. S. Your Brother is dead, and dy'd in *Newgate.*

Jennison. Yes, my Lord.

The Records of the Attainders and Convictions of those concerned in the Popish-Plot, produc'd as Evidence of it. Page 612.

Then the Records of the Attainders of *Coleman*, *Ireland*, and the other Conspirators, were produc'd; and of *Green*, *Bury*, and *Hill*, for the Murder of Sir *E. Godfrey*: As also the Conviction of *Reading*, of *Tasborough* and *Price*, of *Knox* and *Lane*, and of *John Giles.*

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The Managers desir'd the Record of *Coleman*'s Attainder might be read at length; and accordingly the whole Indictment, *&c.* was read in *Latin*: After which Sir *William Jones* acquainted the Court, that they had finish'd their Evidence as to the Plot in general; but that their Evidence as to the Lord *Stafford* in particular, wou'd be so long, that they wou'd not go thro' it the remaining Part of this Day: Whereupon their Lordships agreed to adjourn, and hear the Evidence of my Lord *Stafford* the next Day, that they might have the whole Evidence entire.

Lord *Stafford.* I wou'd have your Lordship's Directions, whether I shall answer this General Charge first, before they enter upon the other.

L. H. S. My Lord, you are to make all your Answer entire; and that is best for you.

Lord *Stafford.* I am very well contented, that I may be the better prepar'd for it.

The Lords adjourn

Then the Lord High Steward, with the Consent of the Lords, adjourn'd to the House of Lords: And the Commons return'd to their House, and Mr. Speaker resum'd the Chair; and then the House adjourn'd till Eight the next Morning.

2d Day of the Trial.

Wednesday December 1, 1680, The Lords sent a Message to the Commons, that they wou'd proceed in the Tryal of the Lord *Stafford*, at Ten that Morning, in *Westminster-Hall*: Whereupon Mr. Speaker left the Chair, and the Commons came into *Westminster-Hall*, and having taken their Places, about Ten the Lords came down; and after Proclamation for the Lieutenant of the *Tower* to bring his Prisoner to the Bar, the Lord High

Steward

Steward directed the Managers to proceed in their Evidence.

My Lord *Stafford* desir'd his Council might be near him, to argue such Points of Law as shou'd arise: The Managers oppos'd his Council being so near as to prompt him; but admitted, that they might be within hearing of the Evidence: They said, indeed, in Matters of Law Council ought to be allow'd; but pray'd there might be no Council to advise him in Matter of Fact, and tell him what Answers to give.

The Lord *Stafford's* Council admitted to hear the Evidence, but not to stand so near as to prompt him.

L. H. S. When there is Cause, make the Exception; but, as yet, they do not mis-behave themselves.

Then Mr. *Treby* proceeded, and said, He hop'd they had given Proof sufficient of the Plot in general: And it were a Wonder, if the Lord at the Bar, who was so fervently affected to that Party, shou'd not be concern'd in so general a Design of the Party; but this being but Presumption, they shou'd proceed to give positive Evidence: And first, he call'd Mr. *Dugdale.*

L. H. S. Let him be sworn again; you swore him to give Evidence as to the Plot in general; but you did not swear him as to the Particulars against my Lord *Stafford.*

Dugdale sworn a 2d Time, when he came to give a particular Evidence against the Lord *Stafford.*

Sir *William Jones.* 'Tis true, we did divide the Evidence into two Parts, but his Oath was not divided; but if it will be any Satisfactiou, let him be sworn over again, tho' I think it was never seen before.

Mr. *Dugdale* was sworn.

Lord *Stafford.* He is so chang'd, I don't know him; I beg of your Lordships he may look me in the Face, and give his Evidence as the Law requires.

Sir *John Trevor.* If this Witness is to look my Lord continually in the Face, the Court will not hear half his Evidence. I desire he may address himself, as the Law is, to your Lordships and the Judges.

L. H. S. You do see the Witness, my Lord, that is enough for *Face to Face.* Page 615.

Lord *Stafford.* I do submit.

Then Mr. *Dugdale* began his Evidence.

Lord *Stafford.* My Lords, I desire I may have Pen, Ink, and Paper.

The Prisoner permitted to have a Clerk to take Notes for him.

L. H. S. Let my Lord have them. I hope your Lordship has one to assist you, that takes Notes for you.

Lord *Stafford.* There was one all the Day Yesterday: And I desire Mr. *Dugdale* may begin his Evidence again.

L. H. S. Let him begin his Evidence again, for my Lord had not Pen and Ink before.

Dugdale. While I was Servant to my Lord *Aston*, my Lord *Stafford* came frequently thither; and, by this Means, I became acquainted with him; and, upon Mr. *Ewers* Recommendation, was frequently admitted to converse intimately with my Lord: The latter End of *August*, or in *September* 78, my Lord *Stafford*, my Lord *Aston*, and several other Gentlemen, met in a Room of my Lord *Aston*'s House; and for my Encouragement, by Mr. *Ewers*'s Means, I was admitted, and there I heard them come to a Resolution upon the Debates that had been beyond Sea, and at *London*: That the best Way, and the speediest they cou'd resolve on, to introduce their Religion, was, to take away the Life of the King.

Dugdale swears positively that the Prisoner consented to the Resolution of the King's Death.

L. H. S. Was my Lord *Stafford* consenting to that Resolution?

Dugdale. Yes, I heard every one give their particular full Assent.

At which there was a great Hum.

At which there was a great Hum.

L. H. S. What is the Meaning of this? For the Honour and Dignity of publick Justice, let us not carry it as if we were in a Theater.

Dugdale. One *Sunday* Morning, in *September*, my Lord *Stafford* came from Mr. *Abnet*'s House in *Stafford*, to my Lord *Aston*'s, to hear Mass; and I meeting him at the outward Gate, as he alighted, He said, *It was a sad Thing we cou'd not say our Prayers but in a hidden Manner; but e'er long, if Things took Effect, we shou'd have the Romish Religion establish'd.* After this, I think it was about the 20th or 21st of *September*, my Lord *Stafford* sent for me into his Chamber; he was then dressing; and having

sent

ſent his Men out, he told me he had a good Account from Mr. *Ewers*, and other Gentlemen, that I wou'd be faithful and true to their Intentions about the introducing their Religion, and likewiſe told me he was concern'd himſelf in a very high Degree; and ſaid, if I wou'd be concern'd in taking away the Life of the King, I ſhou'd have, for my Charges and Encouragement, 500 *l.* and that I ſhou'd go with him in *October* to *London*, and be under the Care of him and Mr. *Ireland* there; or at my Lord *Aſton*'s, about 25 Miles from *London*, under the Care of Mr. *Parſons*; and I engag'd to be true to my Lord. After this I went and communicated it to Mr. *Ewers*, doubting my Lord's Ability to make good the Payment: And *Ewers* told me, I need not fear it, for *Harcourt* and *Ireland* had Money enough in their Hands to defray that and other Charges; and I ſhou'd not want Money for carrying it on: And at another Time, when there was a Debate about my going up, (my Lord *Stafford* being preſent) they told me I ſhou'd be made equal to one Capt. *Alderly*, that is ſince dead, and I ſhou'd have a Reward in *London*. I underſtood, that the Duke of *York*, my Lord *Arundel*, and my Lord *Bellaſis*, and others, were to give me it. —— At another Time, in my Lord *Aſton*'s Dining-Room, my Lord *Stafford* ſaid, the Reaſon he was ſuch an Enemy to the King was, That both he and my Lord *Aſton* had been great Sufferers for the King; and his Grandfather, or Father, had ſpent 30000 *l.* in the King's Service, and had no Recompence; and whenever there was any Preferment to be diſpos'd of, it was rather given to ſuch as had been Traitors and Rebels, than to ſuch as had been loyal: He ſaid, this was his chief Motive, if there were not Religion in the Caſe, which was of a higher Nature. Page 616.

Mr. *Foley*. What Aſſurance had he of a Pardon, if he ſhou'd ſucceed?

Dugdale. My Lord *Stafford* ſaid, I ſhou'd have a free Pardon for it from the Pope; for the King was excommunicated, a Traitor, and a Rebel, and an Enemy to *Jeſus Chriſt*; and I was to be Sainted.

Mr. *Foley*.

Mr. *Foley.* Let him give an Account of the Letters my Lord *Stafford* wrote to *Ewers.*

Dr. *Dugdale.* There came a Letter to *Ewers* from my Lord *Stafford*, that all went well beyond Sea, and ſo he hoped they did here, for the carrying on the Deſign.

Lord *Stafford.* How long has he known of this Plot?

Mr. *Dugdale.* In general, for the introducing the Popiſh Religion, theſe fifteen Years; but that was not for taking away the Life of the King, but for making ready Men and Arms againſt the King died.

Lord *Stafford.* My Lord, he allows himſelf too great a Latitude; he ſays, the latter End of *Auguſt* or Beginning of *September*, I told him ſuch and ſuch Things; I deſire he may name the Days, and I may prove I was not there.

Mr. *Dugdale.* I can't remember particular Days as to the reſt, but the Day he ſent for me to his Chamber and offer'd me 500 *l.* I remember, by a particular Circumſtance, that that was the 20th or 21ſt of *September*, 78.

Page 617.

Lord *Stafford.* Did he ever ſee Mr. *Ewers* and me together alone?

Mr. *Dugdale.* I have ſeen them ſeveral Times in my Lord *Aſton*'s Gardens, and have been with them when there was only them two beſides my ſelf.

Otes was ſworn again, as to the the Priſoner's Concern in the Plot in particular.

Otes was ſworn again.

Mr. *Treby.* Pray, ſpeak your Knowledge of my Lord *Stafford*'s being engag'd in the Deſign.

Otes. In the Year 67, there were divers Attempts upon the Life of the King, as the Jeſuits told me: And in the Year 74, there was an Attempt upon him upon account of his withdrawing the Indulgence: In 77, when I was in *Spain*, there were ſeveral Letters to the *Iriſh* Jeſuits, from my Lord *Stafford*, to acquaint them how zealous he was in promoting the Catholick Deſigns. The ſame Year, when I was at St. *Omers*, being order'd to look over the Papers, I found ſeveral Letters from my Lord *Stafford*, intimating to the Fathers, that whereas there had been a

Difference

Difference between him and the Society ſeveral Years, the Buſineſs was reconcil'd by one Signior *Con*, and he did aſſure the Jeſuits of his Fidelity and Zeal; In the Year 78, I found other Letters from my Lord *Stafford*, wherein he blames Mr. *Coleman*'s Openneſs in communicating Secrets to Men of whoſe Fidelity he was not ſecure; and and in *June* 78, my Lord *Stafford* came to *Fenwick*'s Chamber in *Drury-Lane*, and receiv'd a Commiſſion to be Pay Maſter General of the Army intended to be rais'd, and my Lord was then going into *Staffordſhire*, and ſaid, he did not queſtion but give a good Account how Affairs ſtood in *Staffordſhire*, *Shropſhire*, and *Lancaſhire*: And at at his Return he did not doubt but *Grove* wou'd do the Buſineſs: And ſpeaking of the King, my Lord ſaid, he hath deceiv'd us a great while, and we can bear no longer.

Lord *Stafford*. I will ſubmit to any Thing, if ever I ſaw *Fenwick* or heard of him till the Diſcovery of the Plot. Page 618.

Otes. He came to him by the Name of *Thomſon*.

Lord *Stafford*. I will willingly die if ever I ſaw this Doctor.

Otes. I went by another Name too, and was in another Habit.

Lord *Stafford*. I never ſaw his Face, or *Fenwick*'s, or *Thomſon*'s, except one *Thomſon* a Merchant at *Bruſſels*: Nor have I writ one Letter this twenty five Years to, or had any Correſpondence with, a Jeſuit.

Edward Turbervile was ſworn.

Mr. *Treby*. Give an Account of your Knowledge.

Turbervile. In the Year 75 I was perſwaded, by my Lady *Powis*, and one *Morgan*, Confeſſor to the Family, to go to *Doway*, in Order to take the Fryers Habit; but finding nothing but Hypocriſy and Villainy among them, I grew weary of being there, and with much Difficulty eſcap'd to *England*; but my Friends were ſo ſet againſt me for coming away, that they declar'd they wou'd do nothing for me, but rather all the Miſchief they cou'd: And I ſuppoſing the World wou'd take

Turbervile's Evidence of my Lord's ſoliciting him to aſſaſſinate his Majeſty. Page 619.

take a Character of me from my Relations, I took a Reſolution to go to *France*, where I had a Brother a Benedictine Monk, who endeavour'd to get me to be of that Order; but I being averſe to that, my Brother recommended me to this noble Lord, the Priſoner; and his Lordſhip underſtanding my Condition from him and the other Fathers of the Convent, imagin'd I was a fit Inſtrument for his Purpoſe, and told me he wou'd put me in a Way to retrieve my Reputation with my Relations, and make my ſelf an happy Man; and having made me promiſe Secrecy, told me in plain Terms, it was by taking away the Life of the King of *England*, who was an Heretick, and conſequently a Rebel to God Almighty: And I being to go to *Diep*, in Order to go with his Lordſhip for *England*, told him, I wou'd give him my Anſwer at *Diep*; but his Lordſhip writing me Word to *Diep*, he ſhou'd go to *England* by Way of *Calais*, and that I ſhou'd wait on his Lordſhip in *London*; I got Paſſage in a Fiſher-Boat for *England*, but never came near my Lord *Stafford*, being unwilling to accept his Propoſal; and ſo I apply'd my ſelf to the Duke of *Monmouth*, who recommended me into the *French* Service.

Lord *Stafford*. I never ſaw this Man before in my Life; and, it ſeems, I was a little unlucky, in chuſing one to kill the King who was ſuch a Coward; he run away from his Colours, and was to have been ſhot to Death: I deſire to know when he went to *Paris*, and who recommended him to me.

Turbervile. I think it was the Beginning of *June*, 75, I went to *Paris*, and I was recommended to my Lord by Father *Sherborne*, Prior of the Benedictine Monks in *Paris*, Father *Nelſon*, Sub-Prior, and my Brother, who is a Monk in the ſame Convent.

Lord *Stafford*. When was it he ſpoke to me?

Turbervile. It was in *November* 75. I came to my Lord ſeveral Times in the Space of a Fortnight. It was at the corner Houſe of the Street which faces

Laxenburgh

Laxenburgh Houſe; the Prince of *Conde* lodges on the right Hand in that Street.

Lord *Stafford.* If the Prince of *Conde* did, I will ſay no more.

Turbervile. I can't take it upon my Oath, but I think he does.

Lord *Stafford.* Did he come to my Chamber, or where?

Turbervile. Sometimes to my Lord's Chamber, and ſometimes he met me in a lower Room.

Lord *Stafford.* Where was this Diſcourſe about killing the King?

Turbervile. In the lower Room.

Lord *Stafford.* What kind of Room was my Chamber?

Turbervile. I can't remember that.

Lord *Stafford.* No, I dare ſwear you can't.

L. H. S. How came it to paſs you never diſcover'd this ſooner.

Turbervile. I thought I ſhou'd not be ſafe, I did not know but my Brains might be knockt out.

L. H. S. How came you to do it now?

Turbervile. The King's Proclamation, and ſome Friends who perſwaded me I might do it with Safety, will give your Lordſhips an Account.

Sir *W. Jones.* My Lords, we ſhall call no more Witneſſes, unleſs the Priſoner occaſion us to do it, to ſupport the Credit of thoſe we have call'd.

The Lord *Stafford* enters upon his Defence.

Then the Lord *Stafford* enter'd upon his Defence, and ſaid, It was now about two Years ſince he was accus'd of this deteſtable Treaſon, that he had been ſeveral Times, in thoſe two Years, made cloſe Priſoner, and neither his Wife, Children, or Servants, permitted to come near him, which were very great Afflictions; and while he was preparing for his Defence in an ordinary Way, he underſtood he was impeach'd by the Commons, which was ſuch an Addition to his Misfortunes, and had made ſuch an Impreſſion on him, that he was hardly in a Condition to make any Defence, and deſir'd their Lordſhips, if there appear'd any Defect in his Defence, to impute it to his Weakneſs, and not any Want of Innocence: Then he expreſs'd his Abhorrence

of

Page 621. of Treaſon in general, and particularly the Gun-Powder Treaſon, which he acknowledg'd to be a Contrivance of the Jeſuits and others, but ſaid it was the Conſpirators private Intereſt, and not the Intereſt of Religion, that put them upon it.

He ſaid, he did not know whether the Church of *Rome* held the Doctrine of King-killing, and abſolving Perſons from their Allegiance: But he knew the Doctors of the *Sorbonne*, and ſeveral other conſiderable Members of that Church, had condemn'd it, as he did for his Part, and that he had taken the Oath of Allegiance, with which he thought no Power on Earth cou'd diſpenſe. That as to the Proof of a Plot, by the Papiſts in general, he did not ſee how he was affected by it, for that it had not been made out that his Lorſhip was a Papiſt, and their Lordſhips ought to take Notice of nothing but what appear'd in Proof; but however, if it did appear he was of that Church, he had kept himſelf from being poiſon'd by ſo wicked a Principle as they were

Page 622. charg'd with: That all Accuſations of Treaſon ought to be accompany'd with Circumſtances, antecedent, concomitant, and ſubſequent, according to Sir *Edward Coke*, but here the whole Tenour of his Life, from his Infancy, had been of another Strain; and then he recounted his Services to the Crown, during the late Rebellion, and his Dutifulneſs to his preſent Majeſty in his Exile, ſo that his Life, he ſaid, had given no Countenance to this Accuſation theſe perjur'd Villains had brought againſt him. That his Lordſhip had Offers of a Pardon made him if he wou'd make a Diſcovery, as well by ſome Members of the Houſe of Peers, as by the Members of his Majeſty's Privy Council; but upon the ſtricteſt Search into his Conduct he could not imagine there was any Foundation for the Charge againſt him: And that his Lordſhip had Notice of the Diſcovery of this Plot long before he was committed, ſo that he had Opportunity enough of making his Eſcape, if he had been guilty; and his remaining here he hop'd wou'd be taken as one Argument of his Innocence.

Then

Then his Lordſhip deſir'd he might have the Peruſal of the Journal of the Houſe of Lords, and the Depoſitions that had been made before the Juſtices of Peace by *Dugdale*, *Otes*, and *Turbervile*; and by comparing their Teſtimonies he did not doubt but make it appear they were perjur'd, but without theſe Depoſitions he did not know how to make his Defence.

Sir *Francis Winnington*. The Witneſſes have been examin'd *Viva Voce*; and as we cannot uſe the Depoſitions he mentions, ſo neither can they be uſed by him.

Mr. Serj. *Maynard*. When there is Occaſion to produce them upon any particular Point, he may produce them if he can; but to deſire to have all the Depoſitions that have been made by our Witneſſes, is a ſtrange Requeſt.

L. H. S. Can you object to my Lord's having Copies of our Journal, and of ſuch Depoſitions as were ſworn before a Magiſtrate?

Sir *W. Jones*. What is enter'd upon your Lordſhips Journal was ſworn above two Years ago, and my Lord, or any Man, might have repair'd to it: Therefore, for his Lordſhip to come now and deſire ſuch Depoſitions as he might have had before, is only to gain Time and cauſe our Evidence to be forgotten: And the Judges will inform your Lordſhips, that when a Man is try'd at the Aſſizes, if he deſires a Copy of the Informations remaining in Court, that he may except againſt the Witneſſes, it is what the Court does not uſe to grant. Page 623.

Sir *Francis Winnington*. Indeed I have ſeen the Judges, upon Tryal of a Criminal, call for the Depoſitions or Informations from the Juſtice of Peace who took them, and cauſe them to be read; but for a Priſoner at the Bar to call for Examinations from the Proſecutors, *& ex debita Juſticia* to demand them, is a Thing that was never done, and I hope will not be admitted here.

Whether Examinations of Witneſſes before a Juſtice of Peace ſhall be uſed as Evidence, either for or againſt a Priſoner at his Tryal.

L. H. S. Your Lordſhip ought to have been provided with ſome particular Exception, and not to make your Demand in general.

Lord

Lord *Stafford.* I am inform'd that *Turbervile* did ſwear before two Juſtices of Peace, that he ſpake with me at *Doway*, and in *Paris*, in the Years 73 and 76; and now he ſays, 72 and 75; and I appeal to the Houſe of Commons, whether he did not mend his Affidavit after he had ſworn it.

Sir *W. Jones.* As to what Evidence is before your Lordſhips, it is in your Breaſts what you will communicate to my Lord *Stafford*; but for this Evidence he ſpeaks of, as remaining in our Hands, that admits of another Conſideration: Whatever thoſe Affidavits were, they were taken for the Information of the Houſe of Commons, who are the Proſecutors. Now if my Lord had produc'd any Evidence, that this Witneſs had depos'd before a Juſtice of Peace contrary to what he ſays now, there might have been Reaſon to have look'd after theſe Affidavits; but to deſire them to be produc'd on a bare Suggeſtion that there is a Variance, is unreaſonable.

A Priſoner may bring Evidence to prove the Witneſs gave a different Teſtimony before the Juſtice of Peace, to what he gives in Court.

Lord *Stafford.* If theſe Gentlemen, that are Managers, will aver there is no Variation, I will ſubmit: Nay, if they will ſay, it was not debated in the Houſe of Commons whether he ſhou'd mend or no.

L. H. S. What ſay you to it, Gentlemen?

Page 625.

Sir *W. Jones.* What was done in the Houſe of Commons, does not become us, that are Members, to diſcloſe; but we will admit, that in the Depoſitions, made before the Juſtice of Peace, there was a Year put down, which the Witneſs finding he was miſtaken in when he had look'd over his Papers, deſir'd next Day to mend it.

L. H. S. Gentlemen, ſince tis inſiſted on, that there is a Variation in the Depoſition from what he ſwore at firſt, what can you ſay why he ſhou'd not have the Avail of his Exception?

Sir *W. Jones.* We are not conſcious there is the leaſt Variation, and are confident, if the Thing were produc'd, it wou'd turn to my Lord's Prejudice: But this may be a Precedent for the future, and therefore we cannot, without reſorting to the Houſe, conſent to deliver any Thing the Houſe took for their Information.

Mr. Serj.

Mr. Serj. *Maynard.* Let him inſtance in Particulars, and make out his Evidence, not feign Things to put off the Cauſe; for ought I ſee, 'tis to no other End: And 'tis a Jeſuitical Trick I think.

L. H. S. It is uſual, in theſe Caſes, for the Gentlemen of the Houſe of Commons to ſtay till the Lords are withdrawn, and expect their Reſolution; perhaps they may ſo order it, that you need not go back to the Houſe.

Sir *W. Jones.* Before your Lordſhips withdraw, I deſire it may be obſerv'd, that as to the Variation of the Year we do admit it; but as to what my Lord ſays of the Affidavit being contrary to what he ſwears to Day, let him inſtance wherein, perhaps we may admit it, or anſwer it, or take it into farther Conſideration: But to make ſo general an Allegation, we ſubmit it whether ſuch a Suggeſtion ought to be regarded.

L. H. S. Is there any farther Variation, beſides the Variation of the Year?

Lord *Stafford.* I believe, in my Conſcience, there is, from what I have heard.

L. H. S. How eaſy a Matter were it to expe- Page 626.
dite this Proceſs, by allowing the Priſoner his Demand in this particular.

Mr. *Foley.* It is not in our Hands here: If the Houſe of Commons will order it, it may be done; we cannot order it our ſelves.

Mr. *Powle.* This is a Paper that does properly belong to the Houſe, and how far the Precedents of this may reach in other Caſes, I think is worthy the Conſideration of the Houſe; therefore we cannot preſume to offer any Thing in it, till you give us Leave to reſort thither.

Then the Lords withdrew, and after an Hour and half, return'd.

The Lord High Steward acquainted the Priſoner, That their Lordſhips found he had an Order two Years ago to have Copies of their Journal, and if he wanted any Thing that was there, it was his own Fault: However, they had order'd their Journals to be brought into Court, that he might make what Uſe of them he ſaw fit; but

The Court think themſelves under no Obligation to aſſiſt the Priſoner with the Depoſitions taken by a Juſtice of Peace.

as for *Turbervile*'s Affidavit taken before a Juſtice of Peace, they did not find any Obligation, as a Court, to concern themſelves in that Matter, but he muſt provide himſelf as well as he cou'd, they cou'd not help him in it: But ſince his Lordſhip had intimated he was weary and ſpent in making his Defence already, they wou'd not put him upon proceeding in it now, but give him Leave to recollect himſelf till to Morrow.

Lord *Stafford.* I had ſo little Sleep laſt Night, I deſire I may not come till ten.

Page 627. L. H. S. Are you ſure you can be ready then?

Lord *Stafford.* I ſhall not be ſo ready as I ſhall be next Day.

L. H. S. Gentlemen of the Houſe of Commons, in a Caſe of this Importance, where is the Inconvenience if there ſhou'd be a Day's Reſpite.

Sir *W. Jones.* Your Lordſhips do not expect we ſhou'd conſent to put off the Tryal?

L. H. S. I aſk only what Inconvenience it is?

Sir *W. Jones.* Your Lordſhips are Judges, and will do as you think reaſonable; but it is unuſual and unprecedented, when the Proſecutors have given an Evidence, that the Priſoner ſhou'd have a farther conſiderable Time to give his Anſwer to it.

L. H. S. My Lord *Stafford* had two Days Time to anſwer the Evidence given againſt him.

Sir *W. Jones.* That was an Evidence of twenty eight Articles, and after an Examination of many Days; this but upon two Heads; but as we do not expect your Lordſhips ſhou'd take your Meaſures from our Deſires, much leſs do we expect you ſhou'd do it at the only Inſtance of the Priſoner; eſpecially after ſuch Attempts have been made to ſuborn and deſtroy the Witneſſes: Therefore we deſire your Lordſhips will go on in the Tryal to Morrow.

L. H. S. You ſhall know their Lordſhips Pleaſure when they are withdrawn.

Then the Lords withdrew.

Page 628 The Lords adjourn.

A Meſſage was ſent from the Lords to the Commons, to acquaint them the Houſe had order'd the Priſoner to be brought to the Bar at Ten

the

the next Morning; then the Commons adjourn'd to Eight the next Morning.

Thurſday the 2d of *December*, 1680, the Lords, being met, adjourn'd to *Weſtminſter Hall* about Ten a Clock, and the Lord High Steward acquainted the Priſoner that this was the Time for him to proceed in his Defence. Third Day of the Tryal.

Sir *W. Jones.* That my Lord *Stafford*, and all that are preſent, may have full Satisfaction, the Affidavit of *Turbervile* is in the Hands of Sir *William Poltney*, a Member of this Houſe, and if his Lordſhip pleaſe it ſhall be produc'd.

L. H. S. It is very honourably done of the Houſe of Commons, and my Lord *Stafford* hath no manner of Exception left him.

The Lord *Stafford* deſir'd *Turbervile* might be call'd, and aſk'd when was the laſt Time he ſpoke with his Lordſhip, and *Turbervile* anſwering, in *November*, 1675, my Lord ſaid, that being ſix Months ſince his Teſtimony, was not to be admitted; but his Lordſhip was acquainted that the Treaſons he was impeach'd of were againſt the 25th of *Edward* III. and the Common Law, and there was no Limitation of Time as to the Proſecution upon either: And that even upon the 13 *Car.* II. where the Offence amounted to Treaſon, there was no Time limited; for that Limitation extended only to the leſſer Crimes there enumerated.

Then his Lordſhip deſir'd *Stephen Dugdale* might be ſet up again. Page 629.

Lord *Stafford.* Did he know of the Plot ſixteen Years ago?

Dugdale. There was a general Word amongſt us, that we muſt be provided, againſt the King's Death, with Men and Arms.

Lord *Stafford.* Did he hear that I was to be one amongſt them?

Dugdale. I do not remember that I did.

Lord *Stafford.* What Proviſion of Arms was made?

Dugdale. I did not hear of any certain Number then, but I have heard, of late, that there was 30000 Arms provided beyond Sea, and I have

heard *Gavan* ſay, they ſhou'd have at leaſt 200000 Men to aſſiſt them.

Lord *Stafford.* Tis ſtrange there ſhou'd be 200000 Roman Catholicks rais'd, when there are not 20000 in *England* that can bear Arms.

L. H. S. They might come from beyond Sea.

Lord *Stafford.* How long ſince is it I ſpoke firſt to him about this Plot?

Dugdale. The firſt Time, to my Remembrance—

Lord *Stafford.* I beſeech you, my Lords, we may have no Remembrance, but that he may ſwear poſitively.

L. H. S. No Man can ſwear otherwiſe than according to his Remembrance.

Lord *Stafford.* When a Man's Life and All is at Stake, if they do not ſwear poſitively, who can make a Defence?

Page 630.

Dugdale. It was about *Auguſt* or *September*, 78.

Lord *Stafford.* I deſire he may be poſitive, whether it were in *Auguſt* or *September.*

Dugdale. I dare not be poſitive as to that, but one Time was the 20th or 21ſt of *September*, 78.

Lord *Stafford.* As to the Conſult, when ſuch and ſuch were preſent, and he ſays the King's Death was reſolv'd on, When was that?

Dugdale. It was either the latter End of *Auguſt* or the Beginning of *September.*

Lord *Stafford.* Was it within five Days of the End of *Auguſt*, or five Days in the Beginning of *September*, there is the Space of ten Days; ſure that is Latitude enough.

Dugdale. I cannot be poſitive; I did not then intend to reveal the Plot, or I might have given you better Satisfaction.

Page 631.

Lord *Stafford.* How many Days will your Lordſhips underſtand, the Beginning or End of a Month to be.

L. H. S. I can't tell how much their Lordſhips will underſtand by it till they are withdrawn; Will your Lordſhip ſtand ſtill for that?

Lord *Stafford.* He ſwore, at the Tryal of Sir *George Wakeman*, or the Jeſuits, that there was a Conſult at my Lord *Aſton*'s at *Tixall*, in *Auguſt*, and I was one.

Dugdale.

Dugdale. I do ſay there was a Conſult at *Tixall* in *Auguſt*, but I did not charge your Lordſhip poſitively to be there then.

Lord *Stafford.* I think you did, and I can prove it by Witneſſes.

The Lady Marchioneſs of *Wincheſter* was call'd, (the Priſoner's Daughter.)

She depos'd, That *Dugdale* did ſay, at Sir *George Wakeman*'s Tryal, that he was to receive Orders from my Lord *Stafford* in *June* or *July*, when he was to come down; and that my Lord was at a Conſult at *Tixall* in *Auguſt*, and that he did not name *September* then. Page 632.

And Mrs. *Howard* depos'd, That *Dugdale* teſtify'd, at the Tryal of Sir *George Wakeman*, that my Lord *Stafford* came down in *June* or *July*, and was at the Conſult in *Auguſt*; and ſhe depos'd farther, that they went to that Tryal on purpoſe to obſerve what was ſaid, and had kept it in their Minds ever ſince.

Dugdale. I ſuppoſe there were a great many more at the Tryal than thoſe two Ladies, who can remember I ſaid no more than I do now.

Lord *Stafford.* I have brought two Witneſſes to aver, he ſaid I was there at a Conſult in *Auguſt*: Now I can prove I was not there the whole Month of *Auguſt*. —— And not till the 12th of *September*; but if I name any of the Houſe of Peers, as my Witneſſes, does that prevent their being Judges?

One may be both Judge and Witneſs.

L. H. S. No, my Lord, they may teſtify for you, and yet remain in the Capacity of Judges. My Lord *Stafford* had a great many Witneſſes that were Peers.

Lord *Stafford.* I deſire, as my Witneſſes did not hear, Yeſterday, what the others ſaid, ſo they not hear what mine ſay.

The King's Witneſſes ought not to be debarr'd hearing what the Priſoner's Witneſſes depoſe. Page 653.

L. H. S. It was not well your Witneſſes were not here then, for if Witneſſes were to confront one another, ſhall they not hear what one another ſay.

The Lord *Stafford* calls his Witneſſes.

Then *Thomas Bonny* appear'd as a Witneſs for my Lord.

He depos'd, That he was Servant to my Lord *Worceſter*, and my Lord *Stafford* being at the *Bath* in *Auguſt*, 78, my Lord *Worceſter* did, on the 17th of that Month, being his Wedding Day, ſend his Coach to *Bath* for my Lord *Stafford*; and that my Lord *Stafford* ſtaid at my Lord *Worceſter*'s till the next Day, and then return'd to the *Bath*; and the 31ſt of *Auguſt* my Lord *Stafford* came to my Lord *Worceſter*'s at *Badminton* again, and upon *Monday* the 2d of *September* ſet out from thence for *London*.

Thomas White, another Servant of my Lord *Worceſter*'s, appear'd.

Lord Marqueſs of *Worceſter*. My Lord *Stafford* deſir'd his Witneſſes might not be aſk'd what Religion they were off, but I deſire all my Servants may be aſk'd, for I keep none but Proteſtants.

Thomas White depos'd, That he was my Lord *Worceſter*'s Coachman, and fetch'd my Lord *Stafford* from *Bath* to his Lord's at *Badminton* the 17th of *Auguſt*, being his Lord's Wedding Day, and that the 2d of *September* he drove my Lord *Stafford* towards *London*.

Richard Bevan, my Lord *Worceſter*'s Groom, appear'd.

He depos'd, That my Lord *Stafford* was at *Badminton* the 17th of *Auguſt*, being my Lord *Worceſter*'s Wedding Day.

My Lord Marqueſs of *Worceſter* depos'd, my Lord *Stafford* was at his Houſe the 17th of *Auguſt*, and he believ'd he ſet out the 2d of *September* for *London*, as his firſt Servant had depos'd.

Page 634.

My Lord *Stafford* deſir'd *Dugdale* might be call'd again, and he appear'd.

Lord *Stafford*. When did I offer him the 500 *l.* to kill the King, and what Day does he ſay the Race at *Etching-Hill* was?

Dugdale. It was the 20th or 21ſt of *September*, at his Chamber at *Tixall*, and the Race was about that Time.

Lord *Stafford*. 'Tis very true, the 20th of *September* this Fellow was in my Chamber, he did

ſerve

ſerve my Lord *Aſton* as a Bailiff; and the Morning the Race was, my Man came and told me, *Stephen Dugdale* deſir'd I wou'd aſk my Lord *Aſton* Leave for him to go to the Race, for my Lord was angry with him already for meddling in Races, and he dare not aſk himſelf: I bid my Servant call him in, and I aſk'd him ſome Queſtions about the Race, and told him I wou'd get Leave of my Lord for him; and accordingly I went to my Lord *Aſton*, and told him, I was ſending my Servant before to the Race, (having ſome little Concern in it my ſelf) and deſir'd my Lord he wou'd let *Dugdale* ſhew my Man the Way, and they went before; I had no other Diſcourſe with him.

L. H. S. Was your Lordſhip never alone with him in your Chamber?

Lord *Stafford*. No, never in my Life; and he ſays, my Servants uſed to come for him, I profeſs it is all falſe.

Dugdale. My Lords, I was in my Chamber, and was buſy that Morning, when my Lord ſent for me by his Page, or one that waits on him in his Chamber, and when I went the Page was in the Chamber, and he order'd him to go out.

Nicholas Furneſe, my Lord *Stafford*'s Man, appear'd. Page 635.

L. H. S. Do you remember *Dugdale* was in your Lord's Chamber that Morning *Etching-Hill* Race was?

Furneſe. My Lord, about Eight or Nine that Morning, as I was going to my Lord's Chamber, through my Lord *Aſton*'s Hall, *Dugdale* came to me and deſir'd me to aſk my Lord to get him Leave to go, for he ſaid, my Lord *Aſton* was angry with him, and he dare not aſk himſelf; that one Mr. *Fox* was to be at the Race, and had a great deal of Money to Bett, and ſeveral People wou'd give Money to Bett, and ſo it wou'd be a great Loſs to him if he did not go; accordingly I ſpoke to my Lord, and my Lord bid him come in, and aſk'd him ſeveral Queſtions about the Race, and told him, he wou'd ſpeak to my Lord *Aſton* for him; and when my Lord was dreſs'd, he went out of

his Chamber to ask my Lord *Aston*, and bid me get ready to go to the Race; and coming down the back Stairs, my Lord met me, and bid me go along with *Stephen Dugdale* (for he had ask'd Leave for him to go) and he wou'd show me the Way to *Etching-Hill*; so about Twelve we got to the Race, and some Time after I went to the Place where my Lord was to dine, to wait for his coming, and left *Stephen Dugdale* betting: We return'd that Night to my Lord *Aston*'s, and early next Morning set out for my Lord's own House.

L. H. S. Did not you leave *Dugdale* behind you, in the Chamber, when your Lord bid you go dress your self.

Furnese. I conducted *Dugdale* into the Chamber, and staid with him all the Time he was there: My Lord went to my Lord *Aston* before I went out of the Chamber.

Dugdale. When I came into the Chamber, my Lord was getting up, and order'd both his Servants out of the Room.

Furnese. My Lord never bid me go forth that Day or any other in my Life, when any was in the Room. Page 636. ——— He depos'd farther, that he had liv'd with my Lord these fourteen Years, that he was a Native of *Brussels*, and of the Roman Catholick Religion.

George Leigh, another of my Lord *Stafford*'s Servants, appear'd.

He depos'd, That he remember'd my Lord *Stafford* was at my Lord *Aston*'s that Morning *Etching-Hill* Race was, but he did not remember *Dugdale* was in his Lord's Chamber that Morning.

L. H. S. Did you ever come from my Lord *Stafford* to bid *Dugdale* come to him?

Leigh. I don't remember that ever I did.

Dugdale. I'm sure he has come to my Chamber for me to go to my Lord.

Furnese was call'd again.

L. H. S. Did my Lord *Stafford* ever send you for Mr. *Dugdale* in his Life?

Furnese. Never, my Lords.

Lord

Lord *Stafford.* He was such an impudent lying Fellow I cou'd not endure him; I hope your Lordships won't think I employ'd such a Fellow as this, who soon after run away from my Lord *Aston*'s.

L. H. S. Did you never see my Lord *Stafford* and *Dugdale* together, *Furnese?*

Furnese. Never in my Life.

L. H. S. Why, you saw them together when you brought him to the Chamber.

[*Here the Audience laugh'd.*] *Furnese.* Never alone.

Lord *Stafford.* I did not think I was in a Cock-pit or a Play-House: But I desire to prove that *Dugdale* run away from my Lord *Aston*'s.

Thomas Sawyer appear'd.

He depos'd, That he had been six Years Servant to my Lord *Aston*; and he knew that *Dugdale* went away from my Lord *Aston*'s, for Debt, the latter End of *November* or the Beginning of *December*, 78, and that at *Heywood* he was taken up by the Watch and brought back, by some Justices of Peace, to *Tixall*, and when they had spoke to my Lord, they resolv'd to carry him to Jail: And *Dugdale* desir'd me to go to my Lord *Aston*, and perswade him to own him for his Servant, for he was so much in Debt, that he shou'd be undone if he went to Jail; and I met Mr. *Phillips*, the Parson of the Town, who told me he had been with my Lord to desire him to own him, and he said, he wou'd not own him as his Servant; it was his own Act and Deed: So Mr. *Phillips* and I came back to the Ale-House where *Dugdale* was, and told him; and he rose up and swore he wou'd be reveng'd of my Lord *Aston* if ever it lay in his Power. ——— And another Time, being in the Serjeant's Hands at *Stafford*, he promis'd to pay me 29 *l.* he ow'd me, such a Day, and I came, but he was not so good as his Word: This was three or four Days before he began to peach: And he told me, it was reported he shou'd be a Peacher, and have 200 *l.* for informing that there were fourteen Priests in the Country, but, taking a Glass of Drink in his Hand,

Page 637.

Hand, says to *Thomas*, *By God, I wish this may be my Damnation and my Poison, if I know of any Plot or any Priests.*

L. H. S. Have you not seen *Dugdale* in Father *Ewers*'s Company at *Tixall*?

Sawyer. Yes, I have.

L. H. S. Did not you think *Dugdale* a stout able Fellow, at *Tixall*?

Sawyer. No, he never was accounted so.

L. H. S. Did you think him an honest Man, or a rich Man?

Sawyer. No truly, my Lords, he has accounted with my Lord *Aston*, and reckon'd Workmens Bills as paid, when they have not been paid some of the whole Years.

L. H. S. Do you remember the Day my Lord *Aston* came to *Tixall*?

Sawyer. He came the 12th of *September.*

Mr. *Treby.* What Religion are you of?

Sawyer. Of the Church of *England.*

Mr. *Philips*, the Minister of *Tixall*, appear'd.

He depos'd, That whereas *Dugdale* had sworn he receiv'd a Letter concerning the Death of Sir *E. Godfrey*, dated the 12th, and that he communicated that Letter to Mr. *Sambridge*, and the Deponent the *Tuesday* after, the Deponent averr'd, that he never heard of the Death of Sir *E. Godfrey*, either from *Dugdale* or any other, 'till it was publickly known.

Page 638.

Lord *Stafford.* I ask him, if he did not go from *Dugdale* to my Lord *Aston*'s, to know if he wou'd own him for his Servant?

Mr. *Philips.* Yes, he requested me to go, tho' I was loth to go, having no Familiarity or Intereſt in my Lord *Aston.* Upon *Dugdale*'s Importunity, I went, and desir'd my Lord he wou'd own him for his Servant, and it might prevent his going to Goal; but my Lord reply'd, It was his own Act and Deed, he wou'd have nothing to do with him, and that the Justices might do what they wou'd with him: The Justices were Sir *Walter Baggot*, and Mr. *Kinnersly.*

Lord *Stafford.* I desire the Gentlemen of the House of Commons will permit Sir *Walter Baggot*, who

who is a Member, to depoſe, whether he did not apprehend *Dugdale*, and upon what Account?

Sir *Walter Baggot*. My Lords, Mr. *Dugdale* was taken at an unſeaſonable Time of Night, and brought to me next Morning by the Watch; and I took him away to *Stafford*, where there were ſeveral other Juſtices of the Peace; but my Lord *Aſton*'s Houſe being in the Way to *Stafford*, I call'd upon him, to know if Mr. *Dugdale* were not his Servant; he told me, he was no Servant of his, and he wou'd not receive him; upon which I, and another Juſtice of Peace that was with me, took him to *Stafford*. The Occaſion of our Meeting there, was to ſummon in the Militia upon an Alarm of the Papiſts being riſen in *Derbyſhire*: At *Stafford* we tender'd the Oaths of Allegiance and Supremacy to *Dugdale*, which he took: Afterwards, we told him, he was a likely Man to know ſomething of the Plot, and it was a proper Time to diſcover it to us, that were Juſtices; but he at that Time deny'd the Knowledge of it.

Lord *Stafford*. My Lords, you obſerve, my Lord *Aſton* wou'd not receive him; and ſurely, if my Lord *Aſton* had been conſcious *Dugdale* was engag'd in a Plot with him, he wou'd not have diſoblig'd him.

Mr. *Kinnerſley* alſo depos'd, That they tender'd *Dugdale* the Oaths, and he took them; and deny'd he knew any Thing of the Plot. Page 639.

Sir *Tho. Whitgrave*, another of the Juſtices, depos'd to the ſame Effect; and added, That after *Dugdale* had taken the Oaths, he told him, he look'd upon him as one of them, and wou'd do him any Kindneſs he cou'd: And *Dugdale* anſwer'd, He was born of Proteſtant Parents; and tho' it was his Misfortune to fall into the Houſes of Papiſts, he never lik'd their Religion: Whereupon the Deponent told him, He was confident he muſt know of the Plot; and he had now an Opportunity of ſerving his own Intereſt, and obliging his King and Country, by the Diſcovery; but *Dugdale* reply'd, *As he hop'd to be ſav'd, he knew nothing of it.*

Lord

Lord *Stafford.* I ſhall now prove, that *Dugdale* hath endeavour'd to perſwade People to ſwear againſt me falſly.

William Robinſon appear'd.

Page 640.

He depos'd, That he was an Upholſterer, and liv'd near *Worceſter:* That he met Mr. *Dugdale* at *London*, near *Charing-croſs*, about *Midſummer* was Twelve-Month, and *Dugdale* carry'd him to a Publick Houſe and treated him; and aſk'd him, why he was ſo dejected? That the Deponent reply'd, He was *poorer than he uſed to be:* Whereupon *Dugdale* told him, he ſhou'd not want any Money he had; and if the Deponent wou'd be rul'd by him, he wou'd furniſh him with Money; and *Dugdale* pull'd his Handkerchief out of his Pocket, in which there was eight or 9 *l.* and bid the Deponent take Money if he wanted, (but he took none.) Then *Dugdale* told the Deponent, he cou'd furniſh him with Money, *if he wou'd come in as an Evidence againſt my Lord* Stafford; but the Deponent ſaid, he did not know my Lord.

Mr. *Foley.* Did he ſee *Dugdale* any more, or was there an End of it?

Robinſon. I ſaw him no more.

John Morral, a Barber of *Ridgley* in *Staffordſhire*, appear'd.

L. H. S. What can you ſay to *Dugdale?*

Morral. My Lords, the 6th of *Auguſt* was Twelve-Month, Mr. *Dugdale* ſent for me to the *Whitehorſe* at *Ridgley*; and, in Converſation, he ſwore, *God damn him, I knew as much of the Plot as he.* I reply'd, *If he knew no more than I, he knew no more than my Lord Mayor's Great Horſe:* Then he took me aſide; Come, ſays he, you are a poor Man, I can put you in a Way, you may live gallantly; I will give you fifty Pound in Hand, if you will do ſo and ſo.

L. H. S. What do you mean by *ſo and ſo?*

Morral. To ſwear againſt Mr. *Howard*, Sir *James Symonds*, Mr. *Herbert Aſhton*, my Lord *Aſton*'s Brother, and ſeveral other Gentlemen of the Country.

L. H. S. Did he offer you Money to ſwear againſt my Lord *Stafford?*

Morral.

Morral. I did not hear him mention any Thing of him.

L. H. S. What were you to ſwear againſt thoſe other Gentlemen?

Morral. That they were at a Meeting at Mr. *Herbert Aſton*'s, upon the Conſpiracy of the Plot.

Samuel Holt, a Blackſmith of *Tixall*, appear'd.

He depos'd, That *Dugdale* ſent for him to the *Star* at *Stafford*, and ſaid, he muſt ſpeak with him in private; and then told him, if he wou'd ſwear *Walter Moor* carry'd *Ewers* away, he wou'd give him 40 *l.* and bid him not be afraid of my Lord *Aſton*, for he wou'd get him to *London*, and place him, that where he got one Shilling, he ſhou'd get five.

Mr. *Lydcot*, a Fellow of *King*'s College, and late Secretary to the Lord *Caſtlemain*, appear'd. Page 641.

Lord *Stafford.* What did *Dugdale* ſwear at the Tryal of the five Jeſuits, in Relation to the News of Sir *E. Godfrey*'s Death.

Lydcott. *Dugdale* did then, and at the Tryal of Sir *George Wakeman*, ſwear, That a Letter came down to my Lord *Aſton*'s on the *Monday*, and he imparted it on the *Tueſday* after, at the Ale-houſe, to one Mr. *Sambridge* and Mr. *Philips*. I took Notes of thoſe Tryals.

Mr. *Charles Gifford* was ſworn.

He depos'd, That he was ſummon'd as a Witneſs at the Tryals of the five Jeſuits, *Langhorn*'s and *Wakeman*'s, and that he took Notes.

L. H S. What did Mr. *Dugdale* ſwear then?

Gifford. At the five Jeſuits Tryals, he ſwore, He receiv'd a Letter ſent to *Ewers*, (which he interpreted) and it ſpoke of the Death of the Juſtice of Peace; and that he went to an Ale-houſe, and imparted it to Parſon *Philips* and my Lord *Aſton*'s Kinſman, Mr. *Sambridge*; and at Sir *George Wakeman*'s Tryal, he ſaid much the ſame.

Mr. *Sambridge* appear'd, and being deaf, the Black Rod was ſent to put the Queſtion to him.

Black Rod. Did Mr. *Dugdale* tell you on the *Tueſday*, that Sir *E. Godfrey* was murder'd the *Saturday* before?

Mr.

Mr. *Sambridge.* No, he never told me of any ſuch Thing upon my Salvation: I never heard of it 'till *Friday* or *Saturday*, when he was found.

L. H. S. Was he with *Dugdale* at the Alehouſe on the *Monday*, *Tueſday*, or *Wedneſday* that Week?

Mr. *Sambridge.* Not as I know of.

Lord *Stafford.* What Reputation had *Dugdale* in the Country?

Mr. *Sambridge* Oh! The wickedeſt Fellow that ever liv'd: I know a great deal of it myſelf, and hundreds will ſay as much.

L. H. S. What Religion are you of?

Mr. *Sambridge.* I was never a Papiſt in my Life, nor a Fanatick.

L. H. S. What Ill in particular do you know of *Dugdale*?

Mr. *Sambridge.* He was very abuſive to the Clergy and other, eſpecially to Mr. *Philips*; and wou'd ſay, the Clergy of *England were a lewd Clergy, and a Pack of Rogues.*

The Priſoner deſir'd *Otes* might be call'd again, and he appear'd.

Page 643.

Lord *Stafford.* I deſire Mr. *Otes* may be aſk'd, when was the firſt Time he ſaw me in his Life?

Otes. As I remember, it was in *June*, at Mr. *Fenwick*'s Chamber, when he receiv'd his Commiſſion to be Pay-Maſter General of the Army; and it was deliver'd to him by the Name of Mr. *Howard* of *Effingham.*

L. H. S. Did you read it? How was it ſign'd?

Otes. I read it; and, I think, it was ſign'd as the reſt, *Johannes Paulus Oliva*; but I can't be poſitive.

Lord *Stafford.* I declare, in the Preſence of God, I never ſaw this Man in my Life; nor did I ever go by any other Name than *Stafford*, ſince I had the Honour to be a Peer: I never heard of *Fenwick* the Jeſuit, or *Thompſon*, the Name they ſay he went by, 'till the Plot was diſcover'd, and he was taken. I deſire I may have out of the *Journals* the Depoſition on which I was committed.

Then the Clerk read that Part of the *Journal*, which was to this Effect:

The

'The 25th of *Oct.* 1678, The Lord *Stafford* acquainted the Houſe, he heard there was a Warrant iſſu'd by the Lord Chief Juſtice, to apprehend him.

'The Lord Chief Juſtice being preſent, ſaid, That about Nine laſt Night he receiv'd a Letter from the Speaker of the Houſe of Commons, dated from the Chair, to come to the Houſe about Buſineſs of Moment: That he attended the Houſe, and they deſir'd him to iſſue Warrants for the apprehending the Lords *Powis*, *Stafford*, *Arundel*, *Peters*, and *Bellaſis*: And that having taken the Examination of *Titus Otes*, he iſſu'd Warrants againſt them.

The Journal of the Houſe of Lords read as Evidence for the Priſoner.

'Upon this, the Examination of *Otes* was read, charging my Lord *Stafford* with High Treaſon. The Lord *Stafford* deny'd the Fact, and then withdrew; and a while after, the Houſe was inform'd, his Lordſhip wou'd render himſelf to the Chief Juſtice.'

L. H. S. This is all that is in the Lord's *Journal.*

Lord *Stafford.* I deſire my Lord Chief Juſtice may be aſk'd, where the Affidavit is he took of *Otes?*

Then the Lord High Steward demanded of *Otes*, if he had a Copy of his own Examination.

Otes ſaid, He had a Copy, but he cou'd not ſwear it was an exact Copy; however, upon Peruſal of it, he averr'd, That the Contents of his Copy were true; and, by the Conſent of the Managers and the Priſoner, it was admitted to be read.—— [*Clerk reads.*]

The Examination of Titus Otes. *Clerk, taken by us this 24th of* October 1678.

L. H. S. It was read the 25th, the next Day, in the Houſe of Lords. Page 644.

Otes's Examination read.

The Subſtance of the Examination was, That *Otes* had ſeen Commiſſions for Civil and Military Employments at Mr. *Langhorn*'s Chambers, under the Seal of *Johannes Paulus Oliva*, Father-General of the Society of *Jeſus*, at *Rome*, directed to the Lords *Arundel*, *Powis*, *Bellaſis*, and *Peters*, and to Mr.

Mr. *Coleman*; and that they accepted their reſpective Commiſſions: That in *May*, *June*, *July*, and *Auguſt* then laſt, he ſaw ſeveral Letters ſign'd *Stafford*; whereby it appear'd, the Lord *Stafford* was in this Conſpiracy againſt his Majeſty; and that he had return'd ſeveral Sums of Money to the Jeſuits to carry on the Deſign; the Letters were directed to *Fenwick* and *Ireland*: and that he ſaw another Letter to him from the ſame Perſons, about a Difference between the *Engliſh* College at *Lisbon*, and the Jeſuits.

Page 645. Then my Lord *Stafford* deſir'd Sir *Philip Lloyd* might be aſk'd, whether ever he heard *Otes* deny, upon Oath, that he knew there were any Lords concern'd in the Plot? Sir *Philip Lloyd* anſwer'd, He heard of ſuch a Rumour, but cou'd ſay no more.

My Lord *Stafford* appeal'd to the Lords of the Council for the Truth of it. The Lord Chancellor ſaid, He heard no ſuch Thing.

Page 646. My Lord *Berkley* ſaid, He did not hear any ſuch Thing before the Council; but that the Lord Chancellor aſk'd *Otes* at the Bar of the Houſe of Lords, if he wou'd accuſe any other Perſon of what Quality ſoever? And he was encourag'd by their Lordſhips to accuſe them: And *Otes* anſwer'd, He had no other Perſon to accuſe in Relation to *England*; but in Relation to *Ireland*, he had: That this was after he had accus'd my Lord *Stafford*, and before he had accus'd the Queen.

Lord *Stafford*. I deſire your Lordſhip to take Notice, That after this, he accus'd the Queen. And at firſt, it may be obſerv'd, he only accus'd me of ſome Letters, ſign'd *Stafford*; but when he had conſulted with himſelf, and poſſibly with ſome others, then he comes and gives Evidence of my having a Commiſſion. At this Rate, he may come to Morrow, and know a great deal more: And I challenge Dr. *Otes*, at the Day of Judgment, to ſay, if ever he ſaw me in his Life, 'till I was committed. And if ever I went by any Name but that of *Stafford*, I will be content

to

to die immediately. I desire *Dugdale* may be call'd again. *Dugdale* stood up.

Lord *Stafford.* I wou'd know, if he did not in his Deposition before Capt. *Lane*, and Mr. *Vernon*, say, That in the Beginning of *September* I told him of the Design, which must be before the 20th or 21st, mention'd in the Journal.

Then *Dugdale*'s Information before Mr. *Lane* and Mr. *Vernon*, as it was enter'd in the Lords Journal, was order'd to be read, wherein it appears he depos'd, 'That presently after *Howard*, Almoner to 'the Queen, went beyond Sea, he was told by '*George Hobson*, Servant to the Lord *Aston*, that 'there was a Design then intended for the Refor-'mation of the Government to the Romish Religi-'on.——That in the Beginning of *September* 78, he 'met my Lord *Stafford* near my Lord *Aston*'s Gates, 'and my Lord *Stafford* said, It was sad that they 'were troubled, and cou'd not say their Prayers 'but in a hidden Manner, but suddenly there 'wou'd be a Reformation to the Romish Religi-'on.——That on the 20th of *September*, the 'L. *Stafford* told the Informant there was a Design 'in Hand; and if he wou'd undertake the De-'sign, he shou'd have a good Reward, and make 'himself famous: That the same Day, immediate-'ly after, the Informant went to Mr. *Ewers*'s Cham-'ber, and ask'd him what the Lord *Stafford* meant 'by those Words? And after *Ewers* had made 'him swear Secrecy upon his Knees, he told him, 'It was to be instrumental with others in taking 'away the King's Life, *&c.* and that *Hobson* also 'told him, the Design was as well to kill the 'Duke of *Monmouth* as the King, *&c.*

Page 647. *Dugdale*'s Examination, taken by the Justices, as it was enter'd in the Lords Journal, read as Evidence for the Prisoner.

Lord *Stafford.* He swears, That presently after the Almoner went over, *Hobson* told him of the Design. Now the Almoner went over three Years before 78, when the Proclamation came out to banish the Queen's Servants for being Papists.

Dugdale. My Lords, I said that *Hobson* told me, that presently after the Almoner *Howard* went over, there was such a Design carrying on: I did not know *George Hobson*, 'till he became Servant to my Lord *Aston*, which was in the Year 78.

Lord *Stafford.* It is ſaid, That preſently after the Almoner went over, *Hobſon* told him ſo.

Then the Information was read again.

L. H. S. Do you know when *Howard* the Almoner went over?

Dugdale. I know it but by Report; I make that no Part of my Oath.

L. H. S. My Lord, You muſt not make a Strain to make a Miſtake.

Lord *Stafford.* God's Life, Is three Years a Strain?

L. H. S. Go on, my Lord; Notice will be taken of your Objection.

Then *Turbervile* was call'd again, and appear'd.

Lord *Stafford.* I deſire his Affidavit may be produc'd where the Miſtake was.

Turbervile. I declar'd I cou'd not be poſitive as to a Year, I own every Thing elſe in it.

Sir *William Poultney.* I have the Affidavit, my Lords; it was taken before me and Sir *Thomas Stringer*, another Juſtice of the Peace, in the Speaker's Chamber: He declar'd there, That he came to my Lord *Powis* in the Year 73; and that he came into *England* in 76: The next Morning he came to me and told me, that ſearching among his Papers, he found the preciſe Time he went to live with my Lord *Powis* was 1672; and the Time of his Coming to *England* was 1675: And deſir'd the Houſe of Commons might be acquainted with it, that this Circumſtance of Time might be alter'd: And the Houſe did order, that he ſhou'd mend it; and he made 73 72, and the 76 75; and then he ſwore it again *de novo.*

Page 649. L. H. S. Did Mr. *Turbervile* correct the Miſtake firſt, or was it found out by others?

Sir *Will. Poultney.* He came and told me of it the next Morning. I did not know he was miſtaken.

Mr. *Turbervile.* By the Oath I have taken, I did correct it myſelf; and no Body mov'd it to me.

L. H. S. How came you to know you were miſtaken?

Mr. *Turbervile.* I was ſearching for a Letter I receiv'd from my Lord *Stafford*: I miſs'd of that, but found my Diſcharge from the *French* Army, whereby I ſaw my Miſtake.

The

The Diſcharge was produc'd, dated at the Camp before *Air*, 4. *Auguſt*, 76.

Lord *Stafford.* My Lord, He ſays he convers'd with me a Fortnight together in *France*, and I propos'd the Killing of the King to him; and ſays, he remembers this particular Circumſtance, that when he came to me I had the Gout in my Feet: I deſire my Servant may be call'd again as to that, for I have not been lame a Moment theſe Forty Years.

Mr. *Turbervile.* He told me it was the Gout; he had a great Lameneſs, ſo that he cou'd not go from one Place to another; and here are ſeveral People can atteſt he has been lame in leſs Time than he ſays.

Furneſe appear'd again.

L. H. S. Was Mr. *Turbervile*, or Father *Anthony Turbervile*, with your Maſter while he was in *France.*

Furneſe. I was with my Lord all the Time, and I never ſaw either of them, or heard the Name.

Lord *Stafford.* Was I lame while I was in *France?*

Furneſe. My Lord was there three Months: He was at *Paris* in *October* and *November*, in *December* at *Rhoan*, and in *January* we came to *England*; and I don't remember my Lord was lame any Part of the Time. Page 650.

L. H. S. Do you remember, *Furneſe*, Mr. *Turbervile*, or any other Servant you ſaw there?

Turbervile. Truly, I don't remember: I might forget him.

Then *Leigh* the Page was call'd again.

L. H. S. Were you all the Time in *France?* Did you ever ſee *Turbervile* there?

Leigh. I was with him all the Time, but did never ſee *Turbervile*: Nor has my Lord had the Gout ever ſince I was with him, which is ſeven Years almoſt.

Lord *Stafford.* *Turbervile* ſays, I ſent him a Letter to *Diep*, which he can't find. I deſire to know what were the Contents of that Letter.

Turbervile. That I ſhou'd not ſtay for him at *Diep*, but make what Haſte I cou'd to *London*, and meet him there; for he had appointed a Yacht to come to *Calais* for him.

Lord *Stafford.* Did I ſend you Word that Count *Grammont* came over with me?

Turberville. Yes, to the beſt of my Remembrance.

Lord *Stafford.* Now I ſhall prove I did not come by *Calais*, but by *Diep*; and Count *Grammont* did not come over with me.

Mr. *Wyburn* was call'd.

He depos'd, That in *December* 75, having Occaſion to go into *France*, he heard of a Yacht that was ſending over to *Diep* for my Lord *Stafford* and Mr. *Henry Sidney*, his Majeſty's Envoy, and took the Opportunity of going in it: That the 24th of *December* they weigh'd Anchor, and the 2d of *January* arriv'd at *Diep*; and the Captain hearing the Lord *Stafford* was at *Rhoan* expecting him, deſir'd the Deponent to write a Letter to him, which he did, and the Lord *Stafford* came to *Diep* the 4th of *January*, and went to *England* in the Yacht.

And *Furneſe* and *Leigh*, my Lord's Servants, alſo depos'd. Their Lord came by *Diep*.

L. H. S. The Queſtion is not whether you came by *Calais*, but whether you writ a Letter to him to *Diep* that you wou'd go by *Calais*?

Lord *Stafford.* He ſwore Yeſterday, that I did come by *Calais*: He did not name the Letter Yeſterday, nor in his Information.

Turberville's Examination read.

Page 651.

'Then *Turberville's* Information, that he gave 'the 9th of *November* 1680, was read; wherein 'he depos'd, That he became Gentleman-Uſher 'to the Lady *Molineaux*, Daughter to the Earl of '*Powis*, about the Year 1672; that he by that 'Means liv'd in the Earl's Houſe three Years, and 'then was perſwaded by the Lady, and one *Mor-*'*gan* a Prieſt there, to become a Fryer, and to go 'over to *Doway* to qualify himſelf for it; but the 'Informant ſtaid but three Weeks at *Doway*, and 'then eſcap'd over to *England* again: Whereupon 'the Lady and the Earl, and all that had encou-'rag'd him to go, became his utter Enemies, threat-'ning to take away his Life, and got his Brother 'to diſinherit him, which laſt they accompliſh'd: 'That finding himſelf Friendleſs, and in *Danger* 'in *England*, he went to *Paris*, where he had a

'Brother

'Brother a Benedictine Monk, who introduc'd 'him to the Lord *Stafford*, who propos'd the Kil-'ling of the King, *&c. As he had depos'd at the* '*Tryal. And he adds in the Information*, That the 'Informant going before to *Diep*, the Lord *Stafford* 'went with C. *Grammont* by *Calais*, *&c.* That when 'the Informant liv'd at my Lord *Powis*'s, there 'uſed to be Conſults of Prieſts in the Lady '*Powis*'s Chamber; among whom the Earl of *Ca-*'*ſtlemain* was one: And that at the breaking up 'of thoſe Conſults, the Informant had ſeen them 'break out into an Extaſy, ſaying, *They hoped e'er* '*long to ſee their Religion eſtabliſh'd, tho' they had met* '*with one great Diſappointment, which was the Peace* '*ſtruck up with* Holland: And ſaid, That about *May* 'was two Years, he was preſent at Maſs with the 'Lord *Powis* in *Vere-ſtreet*, and the Earl of *Caſtle-* Lord *Caſtlemain* in Popiſh Orders.
'*main* ſaid Maſs in his Prieſtly Habits.'

L. H. S. This Affidavit is to the Purpoſe: It does ſay abſolutely your Lordſhip went by the Way of *Calais*.

Mr. *Turbervile*. What I grounded my Belief of his going by *Calais* upon, was his Lordſhip's Letter.

Lord *Stafford*. He does not in this Affidavit ſay, he believ'd ſo by the Letter; and beſides, Count *Grammont* came by *Diep* too, and came to *England* a Month before me. Page 562.

John Minhead appear'd.

Lord *Stafford*. I call this Gentleman, to ſhew how *Turbervile* was entertain'd at my Lord *Powis*'s when he came from *Doway* again; becauſe he ſays he went in Fear of his Life from them.

Mr. *Minhead* depos'd, That *Turbervile* lay at my Lord *Powis*'s after he came from *Doway*, and was very well receiv'd there.

Then his Lordſhip call'd a Witneſs, to ſhew his elder Brother had no Eſtate that cou'd come to him, he being by another Venter; but it appear'd by the Witneſs, that there was once a Poſſibility of the Eſtate coming to him by a diſtant Remainder, which was dock'd by a common Recovery, upon his Brother's Marriage.

Then my Lord *Stafford* call'd Mr. *Lydcot* again, to prove, that my Lord *Caſtlemain* was not at my Lord *Powis* in the Years 72, 73, or 74; when *Turbervile*, in his Information, had ſworn he was there.

Page 653. Mr. *Lydcot* averr'd, my Lord *Caſtlemain* was not at my Lord *Powis*'s during theſe three Years, but when he came to give his Reaſons, the Court did not think them concluſive, not being able to underſtand the Diary that *Lydcot* ſaid he had kept of their Travels, while he liv'd with my Lord *Caſtlemain*.

Page 654. The Lords Adjourn. The Lords finding it grew late, and that my Lord *Stafford* had more Witneſſes to examine, adjourn'd to their Houſe, and gave Notice to the Houſe of Commons, they wou'd proceed in the Tryal at Ten the next Morning.

4th Day. Page 655. *Friday* the 3d of *December* 1680, The Court being ſet, the Lord High Steward repeated the Subſtance of the Evidence the Lord *Stafford* had given the Day before, and directed him to proceed.

The Lord *Stafford* acknowledg'd his Lordſhip had ſumm'd it up very equitably, and then call'd *John Porter*, Butler to my Lord *Powis*.

L. H. S. What Religion are you of?

Porter. A Church of *England* Man, my Lords.

Mr. Serj. *Mayn.* The Popiſh Church of *England*, I believe.

Lord *Stafford.* Pray, my Lords let not this be: I pray they may not deal thus with me.

Serj. *Mayn.* We do not ſpeak it to the Court; we may ſay what we will among ourſelves, we hope?

Lord *Stafford.* Pray aſk him what *Turbervile* ſaid to him about his Knowledge of the Plot.

Porter. About a Year ſince, when I was Butler to my Lord *Powis*, this *Turbervile* uſed to ſend for me to a Publick Houſe; and, amongſt other Things, he aſk'd me how my Lord *Powis* did; and ſaid, he was mighty ſorry for his Affliction, for he verily believ'd, that neither he, nor the reſt of the Lords, were in the Plot; and he believ'd the Witneſſes who ſwore againſt him were perjur'd: And I anſwer'd, if there was a Plot, he having been beyond Sea, muſt know of it.

He

He told me, *As he hoped for Salvation, he knew nothing directly or indirectly against the King's Person, or of the Subversion of the Government*; and added, *tho' he was a little low at present, and his Friends wou'd not look upon him, yet he hoped God Almighty wou'd never leave him so much, as to let him swear against innocent Men and damn himself.* He has had these Discourses at the *Ship* Ale-house in *Lincolns-Inn Fields*, the *King's Head* Tavern in the *Strand*, and another Time at the *Golden-Ball* in the *Strand*.

Turbervile. It is all false. I own I have said, *I believ'd my Lord* Powis *was the least concern'd of any, and I hoped it wou'd prove so.*

L. H. S. How came *Turbervile* to talk of these Matters? Page 656.

Porter. He did it voluntarily, as we were talking of my Lord *Powis*, and the Lords in the *Tower*; and some of his Friends, he said, were fearful he wou'd come in against them, he being reduc'd to Poverty.

Mr. *Yalden*, a Barrister of *Gray's-Inn*, appear'd.

Lord *Stafford.* I wou'd ask him what *Turbervile* has said in his Hearing about the Plot?

Mr. *Yalden.* In *February* or *March* last, Mr. *Turbervile* and I were talking of the Distractions of the Times, how Trade was ruin'd, and the whole Kingdom out of Order, and he being a little touch'd at some Things that were said, cry'd out, *God damn me, now there is no Trade good but a Discoverer; but the Devil take the Duke of* York, Monmouth, *Plot and all, for I know nothing of it,*

L. H. S. 'Tis odd he shou'd say it was a good Trade to be a Discoverer, and at the same Time say, he knew nothing of the Plot.

Yalden. I understood it, that he curs's'd himself, because he knew nothing to discover; and that he wou'd have got Money by it as well as others, if he cou'd.

Turbervile. Mr. *Yalden* declar'd, Yesterday, he had nothing to say, but what was Hearsay.

Yalden. I can say nothing but what I heard him say; but I do declare, what I have said, is true: And Yesterday *Powel*, who is *Turbervile*'s Friend,

came to me, and bid me take Heed what I did; and ſwore, *By God, it wou'd be the worſe for me elſe.*

Lord *Stafford.* If it remain a Doubt whether I came over from *Diep Chriſtmas* 75, I have a Copy of the Warrant for the Yacht to go to *Diep.*

Manager. We admit it.

Lord *Stafford.* I deſire Dr. *Otes* may be call'd again.

Otes appear'd.

Lord *Stafford.* He ſaid, that being a Miniſter of the Church of *England*, he did ſeemingly go over to the Church of *Rome*: I wou'd know whether he was really a Papiſt, or did but pretend?

Otes. I did only pretend, I was not really one, I declare it.

Lord *Stafford.* How long was Dr. *Otes* in *Spain?*

Otes. I went to *Spain* in *May*, and came Home again in *November.*

Page 657.

Then the Lord *Stafford* deſir'd, that the Council-Books might be produc'd, to ſhew, That *Otes* made Oath before the Council, that he had taken his Doctor's Degree at *Salamanca.* *Otes* anſwer'd, That he was not aſham'd of any Thing he had ſaid or done; but as to what he had ſaid at the Council-Table, his Lordſhip ought to have produc'd one *Viva Voce* to depoſe what he ſaid there, for thoſe Books were no Evidence: And the Lord High Steward ſaid, The Books were not Evidence, unleſs the Clerks wou'd ſwear what was in them. At length one of the Council Books was produc'd by the Managers for the Commons, but it appear'd to be the wrong Book; and the Lord High Steward demanded why his Lordſhip had not before procur'd what he wanted from the Council-Table, but gave the Court ſo much Trouble, and interrupted their Proceedings.

Council-Books no Evidence.

Here happen'd a Quarrel between the King's Witneſſes and the Priſoners; and my Lord *Stafford* complain'd, his Witneſſes were threaten'd; but it appear'd upon Examination, that Mr. *Yalden*, one of my Lord's Witneſſes, had told the King's Witneſſes, *they were a Pack of Rogues*; upon which *Turbervile* had ſhewn ſome Reſentment.

Then

Then my Lord *Stafford* appeal'd to the Lords of the Council, if *Otes* did not say, at the Council Table, that he went from *Valladolid* to *Madrid*, and preach'd in the Jesuits College there, and Don *John* of *Austria* was one of his Audience. Page 658.

Lord Privy Seal. Dr. *Otes* was ask'd before the Council, whether he had seen Don *John* of *Austria* in *Spain*, and he answer'd, one was shewn him who was call'd Don *John*, but he did not know him.

Lord *Stafford.* He says, he saw me receive a Commission, and has seen several of my Letters, I desire he wou'd produce some of them, or any Notes he has taken out of them.

Otes. I cou'd not keep any Letters sent to the Fathers, nor have any Notes out of them, I had but a Sight of them: We keep no Papers but what we communicate to our Superiors; shou'd they have known I had taken Notes out of their Papers, it might have endanger'd my Life.

Lord *Stafford.* Does he know my Hand?

Otes. I have seen my Lord write at *Fenwick*'s Chamber, and carry'd the Letter to the Post; he writes a mixt Hand, I think but an indifferent one; and I believe I have a Letter of my Lord's by me.

Lord *Stafford.* I don't know where *Fenwick*'s Chamber was, nor was ever there.

Otes. Will his Lordship say, I never saw him at Dr. *Perrot*'s, the Arch Priest of the secular Clergy?

Lord *Stafford.* I do profess, before God, I was never at Dr. *Perrot*'s in my Life. Page 659.

Otes. My Lord, I was at Dr. *Perrot*'s Lodgings, and my Lord *Stafford* came in, and he offer'd me half a Crown to fetch the Doctor, who was abroad, and I told my Lord I was no Porter.

Lord *Stafford.* If ever I saw *Otes* or heard of his Name till the Talk of the Plot, I will confess my self Guilty.

Otes. I went by another Name, and was in another Habit; but he must remember me.

Lord *Stafford.* I must insist upon it that this Man is not a credible Witness; he tells you he did

did seemingly profess the Catholick Religion, and now he professes himself of the Church of *England*, and wears that Habit; now let it be for what Ends soever he pretended to be a Papist, one who dissembles with God Almighty to that Degree, as to take the Sacrament after the Manner of the Church of *Rome*, which your Lordships and the House of Commons have declar'd to be gross Idolatry, is never to be look'd upon as a good Witness: And I appeal to you Lordships, if one who pretends to abhor his own Religion, and engage to such a Height in a Way which his Conscience tells him is Idolatrous, be not a perjur'd Fellow, and incapable of being a Witness: He is no Christian, but a Devil, and a Witness for the Devil: And now, my Lords, were he a Penitent, we shou'd discover it by a strict, sober, peaceful, and pious Behaviour; but it was but last Night that he abus'd the Lieutenant of the Tower, and call'd him Rascal and Jaylor.

The Prisoner insists that *Otes* is not a credible Witness, having profess'd his Hypocrisy and Dissimulation with God and Man.

Page 660.

L. H. S. What did *Otes* say to you, Mr. Lieutenant?

Mr. Lieutenant. There being a great Crowd of People, I was desiring Mr. *Otes* to keep them down, and he told me they were Witnesses: I said, I believ'd they were not half Witnesses, and desir'd them to keep down; whereupon *Otes* said, I was but a Jaylor; I told him, if it were not for his Coat, and I was out of this Place, I wou'd break his Head; and then he call'd me Rascal.

L. H. S. Mr. *Otes*, this does not become you, 'tis very ill Manners in you.

Otes. I refer my self to the Law, if I have done the Lieutenant of the Tower any Wrong.

Mr. Serj. *Maynard*. It did not become Mr. Lieutenant to tell him, for a Word, he wou'd break his Head.

Mr. Lieutenant. I shou'd not deserve to be the King's Lieutenant, if a Man in another Habit, out of the Court, shou'd call me Rascal and I shou'd not break his Head.

Lord

Lord *Stafford.* I desire *Dugdale* may be ask'd if he was not a Prisoner for Debt in *Stafford*, when he made the first Affidavit.

Dugdale. I was in the Serjeant's Hands, my Lord.

Lord *Stafford.* And I can prove *Otes* was so poor, he begg'd for Six-pence.

Otes. I own I have not had Two-Pence in my Pocket since I made this Discovery.

Lord *Stafford.* And yet at another Tryal he swore he had been 700 *l.* out of Purse.

Otes. My Lords, a Noble Peer of this House did present me with 100 *l.* I had 100 *l.* for my Narrative, and 100 *l.* for taking some Jesuits, and for some other Copies I had 50 or 60 *l.* and I can make it appear I have spent all this and more in this Service, for I have none of the Money by me now.

Lord *Stafford.* This makes but 350 *l.* not one Tittle he swears is to be believ'd.

Otes. I can prove it now.

Managers. Be quiet, Mr. *Otes*, we will do you Right anon.

Then the Managers proceeded to call more Witnesses, in Order to fortify their own Evidence, and to falsify the Evidence given for the Prisoner; and first they endeavour to shew that *Dugdale* had frequently been in my Lord *Stafford*'s Company, tho' his Lordship pretended he had little Knowledge of him. Page 661. The Managers call other Witnesses to support the Testimony of the first.

William Hanson was sworn.

William Hanson depos'd, That about two Years since my Lord *Stafford* sent *Dugdale* for him, and that *Dugdale* brought the Deponent to my Lord *Stafford* into my Lord *Aston*'s Parlour, where my Lord *Stafford* treated with him about a Boy his Lordship was desirous to take into his Service; and that when the Deponent and the Boy went away they left *Dugdale* with his Lordship in the Parlour, and he did not remember any Body else was then in the Room, but the Deponent wou'd not be positive what Time of the Day or what Time of the Year this was. Page 682.

James

James Anſel was ſworn.

He depos'd, That he ſaw *Dugdale* with a Gentleman they call'd my Lord *Stafford* in the Court at *Tixall*, but whether they had any Diſcourſe together he cou'd not tell; and being aſk'd whether *Dugdale* went away from my Lord *Aſton*'s for Debt, or on account of the Plot, he anſwer'd, he cou'd not tell; but about a Fortnight after the News of the Plot, he told *Dugdale*, he heard he was concern'd in the Plot, and *Dugdale* laugh'd at it, and ſaid, God blaſt him if he knew any thing of it.

The next Thing the Managers endeavour'd to make out, was, that alcho' Mr. *Phillips* and Mr. *Sambridge* both deny'd that *Dugdale* gave any Account of the Death of Sir *E. Godfrey*, the *Monday* after he was kill'd in their Preſence, as *Dugdale* had depos'd at a former Tryal, yet that *Dugdale* did mention that Matter before them.

Page 663. The Managers bring Witneſſes to prove that *Godfrey*'s Death was talk'd of in *Staffordſhire*, before his Body was found.

James Anſel then depos'd farther, That he was at one *Eld*'s, an Ale-houſe in *Tixall*, on *Monday* Morning the 14th of *October*, and that *Dugdale* call'd him into the Parlour there, and told him of the Death of a Juſtice of Peace in *London*; that *Dugdale* came juſt then from Mr. *Sambridge* and Mr. *Phillips*, who were in the ſame Houſe; and that the Deponent afterwards went into the Room where Mr. *Phillips* the Parſon was, but he did not hear any Diſcourſe of the Juſtice's Death there.

Hanſon alſo was call'd again, and depos'd, That he was at Old *Eld*'s Houſe at *Tixall* on *Monday* Morning the 14th of *October*, being the Day he went to run the Race, and he heard *Dugdale* ſay, there was a Juſtice of Peace murder'd that liv'd at *Weſtminſter*, and that Mr. *Phillips* and Mr. *Sambridge* were in the Room, but he cou'd not ſwear they heard it, having had no Diſcourſe with them about it.

Then the Managers proceeded to ſhew that this was reported in the Neighbourhood of *Tixall* before Sir *E. Godfrey*'s Body was found, and they did this on two Accounts, firſt, to fortify what *Dugdale* had ſaid, and 2dly, to ſhew that Sir *E.*

Godfrey

Godfrey was dispatch'd by the Papists, the Prisoner's Confederates, or they cou'd not have known of it there so soon.

Edward Birch, Esq; was sworn.

He depos'd, That on the *Tuesday* and *Wednesday* after Sir *E. Godfrey* was kill'd, and before his Body was found, it was commonly reported in *Staffordshire*, that a Justice of Peace, of *Middlesex*, was kill'd, and 'twas thought by the Papists; but being ask'd, by the Lord High Steward, of whom he heard it, he answer'd, he cou'd not name any one in particular, but several People, who came to his House about Business, ask'd him if he had heard of it. Page 664.

John Turton, Esq; was sworn.

He depos'd, That there were two Races near *Litchfield*, one on *Tuesday* the 15th, and the other on *Friday* the 18th of *October*; that the Deponent was at both of them, and either at one or t'other Mr. *Whitehall*, a Justice of Peace of *Staffordshire*, call'd the Deponent to him, and ask'd him if he knew Sir *E. Godfrey*, and had heard he was murder'd, and upon the Deponent's answering, no, Mr. *Whitehall* reply'd, it was a common Report amongst them, and that he heard he was an active Justice of Peace amongst the Papists, and added, we had need have a Care what we do, for we shall all be sacrific'd.

Then the Managers proceeded to shew the Character of *Robinson*, one of the Lord *Stafford*'s Witnesses, To which Purpose,

Mr. *Booth*, a Member of the House of Commons, was sworn. The Managers discredit my Lord *Stafford*'s Witnesses.

He depos'd, That he met *Robinson* at Dinner at a Neighbour's House in *Cheshire* on a Sunday, where he began a Discourse to ridicule the Lord's Day, and shew'd his Contempt of God and every Thing that was sacred, and his whole Discourse was very profane; that after Dinner *Robinson* wou'd have got the Company to play, and pull'd out a Parcel of Dice, which some of the Company said were false Dice; and the Deponent shewing some Dislike at his Behaviour, *Robinson* was commanded to desist: That this was Page 665.

all

all the Deponent cou'd ſay againſt him of his own Knowledge, but that a Day or two after he went to a Town where there had been a Cock-Match, and ſeveral People came to him and complain'd of *Robinſon*'s Cheats to a very great Degree, and aſk'd him, what they ſhou'd do; that the Deponent reply'd, he was turn'd out of the Commiſſion of the Peace, or he knew enough himſelf to bind him to his good Behaviour. That in *Lancaſhire* there were loud Complaints againſt this *Robinſon*, and that he had chang'd his Name, and was reckon'd a notorious Cheat.

Lord *Stafford*. I never heard his Character before, or I would not have brought him here.

L. H. S. But this is the Man that gives the moſt important Evidence for you, (*viz.*) That *Dugdale* corrupted him to ſwear againſt you for Money.

Lord *Stafford*. If *Dugdale* knew him to be a cheating Fellow, he might think him the likelier to take Money to forſwear himſelf.

Then the Earl of *Macclesfield* was ſworn.

He depos'd, That he apprehended *Robinſon* when he run away from my Lord *Gerard*, having cheated many of his Servants; that the Deponent did not commit him becauſe he was ſomewhat intereſted in the Matter, but waiting till another Juſtice of Peace came, *Robinſon* ſaid to the Deponent, 'My Lord, have you a Mind to have your 'Son-in-Law bubbled? I have been only teaching 'him how to avoid being cheated; I acknowledge 'my ſelf a Cheat and wou'd teach him to avoid 'them: That when the Juſtice of Peace came, they ſearch'd *Robinſon*'s Pockets, and found falſe Dice; and that in all the three Counties of *Staffordſhire*, *Cheſhire*, and *Lancaſhire*, ſeveral People in Court knew this had been his common Practice.

The Lady *Gerard* was call'd alſo to *Robinſon*'s Credit, but ſhe was not examin'd; and *Sampſon Rawlings* was ſworn, in Order to diſcredit *Holt*, another of the Priſoner's Witneſſes.

Page 666. *Rawlins* depos'd, That *Holt* was a Smith, and liv'd at my Lord *Aſton's* Gate, and that he was counted a drunken lewd Fellow, and 'twas ſaid, he

he kept another Man's Wife; that he broke open my Lord *Aſton*'s Wine Cellar, and ſtole ſeveral Bottles of Wine, and my Lord had ſent him to Jayl if *Dugdale* had not begg'd for him: That the Deponent came up to my Lord *Aſton*'s Tryal, and when he went down again *Holt* wou'd have murder'd him, becauſe he had given Evidence for the King, and took Mr. *Dugdale*'s Part, and ſaid, he was a very honeſt Man: That the Deponent was a Taylor, and uſed to work for the Family at *Tixall*, and that *Dugdale* always paid him very honeſtly.

Thomas Thorne was ſworn in Order to diſcredit *John Morral*, another of the Priſoner's Witneſſes.

Thorne depos'd, That *Morral* was a Barber, and uſed to come often to my Lord *Aſton*'s to ſhave him, that he was poor, and the Deponent had contributed to keep him out of Priſon, and that his Reputation was indifferent.

Simon Wright was ſworn.

He depos'd, That *Pleſſington*, Steward to my Lord *Bellaſis*, being in Cuſtody about the Murder of Sir *E. Godfrey*, ſent the Deponent, one *Sunday*, to the Marqueſs of *Wincheſter*'s, to deſire him to procure his Diſcharge, and that the *Tueſday* after *Pleſſington* was diſcharg'd; that thereupon the Deponent and *Pleſſington* became intimate Friends, and the Deponent uſed to ſhave *Pleſſington* and *Dugdale*; and that the Deponent being very intimate alſo with *Dugdale*, *Pleſſington* told the Deponent, that if he cou'd find a Way to take off *Dugdale*'s Evidence, or deſtroy him, he ſhou'd have 700 *l.* and Mr. *Reeves*, an Apothecary in *Chancery-Lane*, offer'd the Deponent his Note as a Security for the Money, as did Mr. *Dewy*, the Scrivener, alſo; and they wou'd have had him ſworn that *Dugdale* wou'd have hir'd him to ſwear againſt *Tasborough* and *Price*, and wou'd have had the Deponent retracted the Evidence he gave in that Tryal of *Tasborough* and *Price*: And ſince that Tryal they perſwaded him to write a Paper to blaſt *Dugdale*'s Reputation and ſhake his Credit, and they carry'd it to Mr. *Drayton* and Sir *James Simmons*, and that they fram'd another

Page 667.

Letter

Letter for him to write to thoſe Gentlemen; and Mr. *Longmore* told him that Sir *James Symons* was better able to perform than *Dugdale* was to promiſe, and if he wou'd ſtand by that he ſhou'd be a happy Man.

L. H. S. What had you ſaid in that Paper?

Wright. I ſaid as they directed me; *That Mr.* Dugdale *wou'd have given me Money to ſwear againſt Sir* James Symons *and Mr.* Gerard, *and I was to have ſworn it but did not:* My Poverty compell'd me, indeed, to accept 4*l.* of their Money, and my Lord *Bellaſis*'s Steward came and ſpent twenty Shilling on me; but they finding me not like to go thro', and diſtruſting me, I went into the Country, where I have ſtaid ever ſince *July* laſt, till I was fetch'd up by a Meſſenger to give Evidence for the King: I receiv'd a Letter from my Lord *Stafford*'s Agent at the ſame Time, to come to *Stafford*, and go up as a Witneſs for my Lord, with his other Witneſſes, wherein the Agent promis'd me Money to bear my Charges.

Which Money was produc'd in Court.

Lord *Stafford.* I deſire Time may be allow'd me, to prove ſomething againſt this Man, till to Morrow.

Mr. Serj. *Maynard.* You will find another Witneſs by that Time. I deſire my Lord wou'd name his Witneſs.

Lord *Stafford.* No, I will not find one, I have him already; his Name is *Dodd.*

Then the Managers proceeded to obviate that Objection, That *Dugdale* did not produce any of the Papers and Letters he mention'd to have receiv'd, by ſhewing that he had burnt them when he he was apprehenſive of its being diſcover'd that he was concern'd in the Plot.

Elizabeth Eld was ſworn.

She depos'd, That when *Dugdale* went from *Tixall* he took ſeveral Parcels of Papers out of his Pockets and Breeches, and ſaid the Times were troubleſome, and if he ſhou'd be ſick upon the Road he wou'd not have his Papers ſeen, and therefore he deſir'd her to burn them, and that ſhe burnt all but one Book; and her Siſter

aſking

aſking if that ſhou'd be burnt, he ſaid, No, there was no Treaſon in that; and the Deponent aſking if there was any Treaſon in the others, he ſaid, Do you think there was? And ſhe depos'd farther, that ſhe heard *Dugdale* ſay, before he went away, as he was about to drink a Glaſs of Cyder, that he wiſh'd it might be his Damnation, and that he might ſink in the Place were he ſtood, if he knew any thing of the Plot. Page 668.

Sir *W. Jones.* Pray, what Religion are you of?

E. Eld. A Roman Catholick.

Anne Eld was ſworn.

She depos'd, That *Dugdale* came to her Father's Houſe over Night, and that he burnt his Papers the next Morning, and had that Diſcourſe with her Siſter and her ſelf, concerning them, as her Siſter had teſtify'd.

The Managers went on, and ſaid, in Anſwer to that other Objection, that *Dugdale* was neceſſitous and in Debt to my Lord *Aſton* and others, and therefore not a fit Perſon to make an Evidence of, they ſhou'd ſhew, that he had been always ready to accompt with my Lord, and that he had Reaſon to think his Lordſhip was in his Debt. To which

The Managers call Witneſſes to ſhew that *Dugdale* was not in Debt to my Lord *Aſton.*

Michael Noble was call'd and ſworn.

He depos'd, That ſince the Diſcovery of the Plot, *Dugdale* deſir'd him to aſſiſt him in making up his Accompts with my Lord *Aſton*, and that they were twice at the Tower, and with great Difficulty they had Acceſs to my Lord *Aſton* once, and that his Lordſhip had three Books of Accompts, two he wou'd let them ſee, but the third, wherein were all the Diſcharges (as Mr. *Dugdale* ſaid) he wou'd not let them ſee.

Stephen Colledge was ſworn.

He depos'd, That he went with *Dugdale*, Mr. *Noble*, of the *Temple*, and one *Boſon*, to the Tower, in Order to get my Lord *Aſton* to ſtate his Accompts with *Dugdale*; that Captain *Hawley*, of the Tower, went up to my Lord *Aſton* to acquaint him they were there, but he brought Anſwer, his Lordſhip was not at Leiſure to ſpeak with them, and that the Lords were juſt going to Nine-Pins:

Whereupon *Dugdale* said he was very ill used, having been several Times there and cou'd not be admitted to speak with his Lordship, and added, that my Lord had a little Book, wherein there was an Accompt made up of 2 or 300 *l.* under his own Hand, which if his Lordship wou'd produce, The Accompt need not be a quarter of an Hour in making up. That Captain *Hawley* brought back Word again, that my Lord did acknowledge he had that Book, and it was ready to be produc'd, but he must wait till his Council came out of the Country, and till he cou'd speak with the Lieutenant, for he wou'd not speak with Mr. *Dugdale* unless the Lieutenant were by, and in three or four Days he wou'd send for him. He depos'd farther, that a Servant of my Lord *Aston*'s, hearing *Dugdale* was there, came into Captain *Hawley*'s Chamber to see him, and paid *Dugdale* great Respect, and wou'd stand bare to him; and some of the Company ask'd this Servant, if *Dugdale* was accounted such a Knave when he liv'd with my Lord as they wou'd make him since, and the Servant answer'd, no; Mr. *Dugdale* was as honest a Gentleman as ever liv'd in their Family.

One indicted for the same Treason not admitted a Witness. Page 669.

My Lord *Stafford* then desir'd that my Lord *Aston* might come and give an Account of this Matter, but was told, my Lord *Aston* stood indicted for the same Crime, and therefore cou'd not be a Witness.

Boson was sworn.

He depos'd, That in *January* last, *Dugdale* telling him he had an Order of Council to pass his Accompts with my Lord *Aston*, he went with Mr. *Dugdale*, Mr. *Noble*, and *Colledge*, to the Tower; and that Captain *Hawley* brought that Answer from my Lord *Aston* mention'd in *Colledge*'s Deposition, whereupon *Dugdale* said, It was very hard, for that my Lord was almost 200 *l.* in his Debt.

Witnesses call'd to support *Dugdale*'s Credit.

Thomas Whitby, Esq; was sworn.

He depos'd, That he had known *Dugdale* to be Steward to my Lord *Aston* nine or ten Years, that he receiv'd my Lord's Debts and Rents for

him,

him, and exchang'd Lands for my Lord in forty Places, ſome the Deponent exchang'd with *Dugdale* himſelf, and that *Dugdale* ſtood very hard for his Lord's Intereſt: That *Dugdale* was the Perſon, next my Lord, in the Family, and govern'd the other Servants; that he never heard but he was an honeſt Man, only ſome Tradeſmen complain'd he put them off without Money, and wou'd not pay them what my Lord ow'd them.

William Southall, Coroner of *Staffordſhire*, was ſworn.

He depos'd, That *Dugdale* was Bailiff to my Lord *Aſton*, and a kind of Governour in the Family; that he bought in Proviſions, paid Workmen, and tranſacted moſt of the Affairs of that Family: That the Deponent had known him eight Years, and he was always of good Repute till now, among my Lord's Tenants and Workmen, and thoſe who had a Dependance on the Family, and the Deponent never heard any ill Report of him till this Buſineſs happen'd.

Southall depos'd farther, That he was the Perſon who perſwaded *Dugdale* to make a Diſcovery of the Plot, while *Dugdale* was in the Serjeant's Hands at *Stafford*; that, to induce *Dugdale* to it, he told him, not only his natural Allegiance but the Oath of Allegiance he had alſo taken, requir'd it of him; that his Majeſty's Proclamation did not only promiſe him Pardon, but a Reward of 200 *l.* if he did it within the Time limited, which was within two Days of expiring; and that at length he conſented to make a Diſcovery, and the Deponent brought the Mayor of *Stafford* to the Serjeant's Houſe to take his Examination, and that he was farther examin'd before Mr. *Vernon* and Mr. *Law*; that the Deponent took Notes of theſe Examinations, [which were read in Court] and they were agreeable to the Examinations that had been before atteſted in Court.

Page 670.

Page 671.

Witneſſes call'd to ſupport *Turbervile*'s Credit.

Thomas Mort was ſworn, to ſhew that *Turbervile* convers'd with the Lord *Stafford* at *Paris*.

He depos'd, That he was Page to my Lord *Powis* when *Turbervile* was Gentleman-Uſher to one of

my Lord *Powis*'s Daughters; that about five Years since the Deponent was with Mr. *Turbervile* at *Paris*, in the Company of his Brother who was a Monk, and that *Turbervile* told him, his Brother, the Monk, had introduc'd him into the Favour of a Lord, (as the Deponent remember'd 'twas my Lord *Stafford*) and that there was a Yacht to come to *Diep* for my Lord, and they might have their Passage to *England* with him; that

Page 672.

thereupon the Deponent and *Turbervile* went to *Diep*, but no Yacht came, and after they had waited a Fortnight, *Turbervile* told the Deponent, they might go to *Calais*, and go over with my Lord from thence; but finding an Opportunity of coming over in a little Vessel from *Diep*, the Deponent and *Turbervile*, at last, took Shipping there. —— He said farther, that he once walk'd about *Luxemburgh* House till *Turbervile* went to wait on a Lord who lodg'd thereabouts.

Mr. *Powel* was sworn.

He depos'd, That *Turbervile* told him, about a Year since, that he had much to say in Relation to the Plot, but said, he was afraid of disobliging his Brother, and that he found some of the Witnesses were discourag'd, and was afraid he shou'd be so too, which were the Reasons he did not reveal it.

Then the Managers call'd some Witnesses as to *Turbervile*'s Character, and Mr. *Arnold*, a Member of the House of Commons, was sworn.

He depos'd, That he had known *Turbervile* these two Years; that soon after the Discovery of the Plot *Turbervile* was sent down by the Lords Committees to search for Priests, and was recommended, by my Lord Duke of *Buckingham*, and to the Deponent, to assist him in it; that he had been in the Deponent's Family some Time, and behav'd himself very well there, and in several other Families of his Relations; that the Deponent never heard a better Character of any Man from all Sorts of People. —— That the Deponent found, by him, he had some Knowledge of the Plot, but when he had press'd him to discover it, he answer'd, The Witnesses were discourag'd and

in

in Danger of their Lives, and that as long as the Duke of *York* had that Power in the Council, and the Lady *Powis*'s Brother that Power over the Countries where he liv'd, he durſt not do it for his Life.

Mr. *Hobby* was ſworn.

He depos'd, That *Turbervile* liv'd with his Brother above a Year, being caſt off by his Relations becauſe he wou'd not take Orders in the Church of *Rome*, (as his Brother told him,) that he was recommended, by his Brother, to his Father, where he liv'd half a Year; that the Deponent had kept him Company ſince in *London*, and he never heard but that he behav'd himſelf as a worthy honeſt Gentleman. Page 673.

Mr. *Matthews*, a Divine, was ſworn.

He depos'd, That Mr. *Turbervile* liv'd in his Neighbourhood ſometime, when he was a Roman Catholick, and that he was a Perſon of a very fair Reputation, and he found him inclineable to come over to the Church of *England*.

William Seys was ſworn.

He depos'd, That he had known *Turbervile* two or three Years, and he behav'd himſelf like a very honeſt civil Gentleman.

Captain *Scudamore* was ſworn.

He depos'd, That *Turbervile* had been much at his Houſe the laſt three quarters of a Year, and he did not ſee but he was a very honeſt Gentleman.

The Earl of *Stamford* and the Lord *Lovelace* were ſworn.

They depos'd, That they had ſeen my Lord *Stafford* come lame into the Houſe of Lords ſeveral Times within theſe ſeven Years: [*Turbervile* having depos'd, That his Lordſhip was lame at *Paris* when he was with him, and my Lord having deny'd he had been lame theſe forty Years, theſe noble Lords, *Stamford* and *Lovelace*, were ſworn to ſupport the Credit of that Witneſs.] Page 674. The Lords *Stamford* and *Lovelace* ſworn for the King.

My Lord *Stafford* acknowledg'd he had been lame thro' Age and Wearineſs, but ſtill perſiſted that he had not been lame of the Gout theſe ſeven

Years, and particularly that he was not lame at *Paris*, as the Witneſs had depos'd.

Thamas Lander, coming into Court, was ſworn as to *Holt*'s Character.

Lander depos'd, That *Holt* was a Smith, and a drunken ſottiſh Fellow: He depos'd farther, that he [*Lander*] came up to my Lord *Aſton*'s intended Tryal with his other Witneſſes, and he was offer'd a Horſe and Money in his Pocket if he wou'd take off *James Anſel* and *Dugdale*'s Evidence; and that Mr. *Thomas Aſton*, and Mr. *Francis Aſton*, and others, were in a Room together at *Tixall* when this Offer was made him.

L. H. S. Did they all make you this Promiſe?

Lander. Yes, my Lord.

Lord *Stafford*. I deſire to aſk Mr. *Whitby* if he did not tell the preſent Lord *Aſton*'s Father that *Dugdale* was a Knave, and deſir'd him to turn him away.

Whitby. My Lord telling me that *Dugdale* ſaid I deſtroy'd his Water, I anſwer'd, that I never endeavour'd it, and his Lordſhip ſaid he believ'd me: Then I told my Lord that *Dugdale* was a Diſhonour to his Family, and kept People out of their Money that was due to them, and that it occaſion'd Complaints; my Lord bid me bring thoſe People that had waited for their Money when his Son came into the Country, and I ſhou'd hear what *Dugdale* wou'd ſay to it; but my Lord's Gentleman told me afterwards, 'twou'd be to no Purpoſe, for my Lord wou'd hear nothing againſt *Dugdale*.

Page 675. Then my Lord *Stafford* produc'd a Letter of *Simon Wright*'s, wherein he tells Sir *James Symons* that *Dugdale* promis'd he wou'd protect him as one of the King's Evidence, and he ſhou'd not want Money if he wou'd ſwear againſt Sir *James* and Mr. *Gerard*.

Wright own'd that it was his Hand, but ſaid, he was perſwaded to ſet his Hand to it, and that Mr. *Fermin Drayton* and Mr. *Longmore* wou'd have had him made Oath of it before a Juſtice of Peace, and that, by the Perſwaſions of *Dray-*

ton,

ton, who was Mr. *Hevening ham's* Butler, he wrote another Letter, which had a great deal more in it.

Sir *William Jones.* I desire to know if he was ever with Sir *James Symons* himself?

Wright. I din'd with him at the *King's-Bench*; and after I had written the Paper that was read, he gave me 20 Shillings; and said, he hoped I wou'd not go off from what I had said.

Lord *Stafford.* You see what is under his Hand, I have no more to say to him.

Sir *Francis Winnington.* I wish his Lordship wou'd produce that other Paper which *Wright* says is of more Consequence.

Lord *Stafford.* I did not know of this 'till just now, when it was deliver'd into my Hands.

His Lordship desiring 'till the next Day to bring in some Witnesses to answer some of the Proofs that had been made, and to sum up and make his Observations on the Evidence: It was granted, and the Lords adjourn'd to their House above. Page 676.

Saturday December 4, 1680.

The Court being set, my Lord *Stafford* desir'd he might examine some Witnesses that he had not nam'd the Day before, to discredit some of those Witnesses who had been brought to discredit his, and to discredit some Witnesses that had sworn directly against him.

The Lord *Stafford* desires he may examine Witnesses to discredit those who had been produc'd to discredit his.

This the Managers oppos'd; for that his Lordship had bound himself up not to call any others than those he had nam'd the Day before; and because, if it were permitted that he shou'd examine to the Credit of those Witnesses who had been brought to discredit his, then the Commons might have Occasion to examine other Witnesses to credit these, and so the Proceedings wou'd be endless.

My Lord *Stafford* said, If he had been concern'd alone in the Event of this Matter, he shou'd not have mov'd it: That his Wife had press'd him to propose it, since their Lordships came in; and tho' he think'd God he cou d himself look Death in the Face without Fear, yet, when he consider'd

in what Condition he ſhou'd leave his Wife and Family in, it mov'd him.

Here he wept.

He went on, and ſaid, He was not concern'd for himſelf, for he knew that he was innocent; but he cou'd not forbear ſhewing his Grief, when he conſider'd his Wife and Children. The Lord High Steward deſir'd the Managers to conſider if it might not ſave Time to let his Lordſhip examine his Witneſſes; for tho' in the Civil Law and *in the Court of Chancery, they do examine to the Credit of Witneſſes, and their Credit, but no farther*; yet he cou'd not tell what their Lordſhips wou'd do in this Caſe, 'till they were withdrawn. The Managers hereupon conſented, that his Lordſhip ſhou'd examine his Witneſſes, provided he wou'd name them; and that if any Evidence ſhou'd be given that might require an Anſwer, they may not be foreclos'd from adviſing with one another about it.

Then my Lord *Stafford* nam'd my Lord *Ferrers*, Dr. *Taylor*, Dr. *Watſon*, Dr. *Elliot*, and one *William Dale*, and ſaid, in a quarter of an Hour, he wou'd name the reſt. And firſt his Lordſhip deſir'd my Lord *Ferrers* wou'd ſpeak his Knowledge of *Southall* the Coroner.

The Lord *Ferrers* ſtood up in his Place.

He declar'd, That he had no Acquaintance with *Southall*; but 'twas reported in that Country, [*Staffordſhire*] that he was a very active Man in the late Times againſt the King, and was look'd upon as diſaffected to this Government.

Lord *Stafford.* As for this *Southall*, I never heard of him before; but for *Feak*, the Mayor, who aſſiſted him in taking the Examination of *Dugdale*, and who drew up the Affidavit, I can prove he is an Attorney, and that he was Mayor of *Stafford*, and proclaim'd the King a Traitor.

William Dale was call'd.

L. H. S. Did *Dugdale* ever hire you to ſwear againſt my Lord *Aſton*? Or do you know of his hiring any Body elſe to ſwear falſly?

Dale. I do not, my Lords.

Mr. Lieutenant of the *Tower* was call'd.

He

He depos'd, That *Dugdale* was at the *Tower* laſt Summer was Twelve-Months, and my Lord *Aſton* wou'd not ſpeak with him, unleſs the Deponent was by: That they came to the Deponent's Chamber, and ſhew'd him the Books of Accompts, which he ſaid he did not underſtand himſelf; but if they inſiſted on his being by, he wou'd get ſome Body to be preſent that did, and have them adjuſted; and Mr. *Dugdale* ſaid, He wou'd come another Time, but from that Time to this he had never heard of him.

The Lord *Stafford* makes his Obſervations on the Evidence.

Then the Lord *Stafford* proceeded to ſum up and make his Obſervations on the Evidence: Shewing, in the firſt Place, that the Defects of his Memory, old Age, his Unſkilfulneſs in the Laws, and Want of Sleep, render'd him incapable of doing it in ſuch a Manner as the Importance of the Thing requir'd; but as their Lordſhips, who were his Judges, were alſo, by Law, to be of Council for him, he ſaid, he hoped they wou'd ſupply every Thing wherein he might be wanting to himſelf.

He obſerv'd, That *Dugdale*, the firſt Witneſs, had at one Examination depos'd, That his Lordſhip was at *Tixall* at *Auguſt*, which appear'd to be falſe; and he thought a Man who wou'd ſwear falſe in one Thing, was not to be credited in any: That his Lordſhip's Witneſſes had diſprov'd him in ſeveral other Parts of his Teſtimony, and ſhewn, that he had endeavour'd to ſuborn People to ſwear againſt his Lordſhip. Page 678.

That as to *Otes*, he depos'd no more formerly than that he believ'd his Lordſhip to be in the Plot, but now he ſwore it poſitively: And he appeal'd to their Lordſhips, If *Otes* did not depoſe in the Lords Houſe, that he only ſaw his Lordſhip's Name to certain Letters, and that he knew no more; but afterwards, he ſwore, he ſaw a Commiſſion deliver'd to his Lordſhip; ſo that his Lordſhip obſerv'd *Otes*'s Memory increas'd as he had Time to invent; and poſſibly at another Time, it might improve much more: That his ſwearing he had no more to ſay againſt any Body,

and

and afterwards accuſing the Queen, and ſwearing his Lordſhip had a Commiſſion, he thought was perfect Perjury: That he obſerv'd *Otes* was ſo far from expreſſing any Repentance or Concern for his Diſſembling ſo notoriouſly with God and Man, that he did, the Day before, with a ſmiling Countenance, and, as it were, in Deriſion, own the monſtrous Offence: That indeed many wicked Men had been admitted as Witneſſes, but never did any wicked Man own a wicked Thing, which he might have conceal'd, and boaſted of it, that ever was credited in any Thing.

As to *Turbervile*, the next Witneſs, his Lordſhip thought it ſtrange, that none of his Servants ſhou'd ſee him at *Paris*, if he had convers'd with him a Fortnight together, eſpecially ſince no Body had Acceſs to him, but they were brought in by the Servants: That *Turbervile*'s ſwearing he came to my Lord *Powis*'s in 73, and the next Day ſwearing it was 72; and that his Lordſhip came by *Calais*, when it appear'd he came by *Diep*, were Circumſtances that ought to render *Turbervile*'s Evidence ſuſpected: And he thought he was ſufficiently contradicted in other Parts of his Teſtimony, as to his being ill uſed by my Lord *Powis* and his Brother at his Return from *Doway*; And that *Turbervile*'s Knowledge of the Plot was but very lately, it having been depos'd by two Witneſſes, that a Year ago he ſwore he knew nothing of it.

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He obſerv'd farther, That not one of theſe Witneſſes were Men of any Quality or Condition; and he thought they gave Evidence rather to get Money, than for the Sake of Truth: And again, he deſir'd their Lordſhips to conſider *Otes*'s diſſembling with God Almighty, and his impudent owning it; and ſaid, if he were a Judge, he wou'd not hang a Dog upon ſuch Evidence.

[Here my Lord *Lovelace* took Notice that Sir *Bernard Gaſcoigne* had got among the Lords, and ſaid, It was the impudenteſt Thing that ever was done in a Court of Juſtice, that while they were trying a Perſon for a Popiſh Plot, a profeſs'd Pa-

piſt

piſt ſhou'd ſtand in the Body of their Houſe. Whereupon Sir *Bernard* went out of Court.]

Then the Lord *Stafford* went on, and ſaid, The whole Courſe of his Life cou'd give no Colour to this Charge; and challeng'd any one to ſay, he had been guilty of one diſloyal Word or Act: That he attended his Majeſty in the late Wars, 'till his Family was reduc'd to great Straits thereby; whereas, if he had come to *London*, and join'd that Party, he cou'd have ſav'd his Eſtate, and liv'd quietly, as others did; and his Lordſhip added, that the Proof of a General Plot by the Papiſts did not affect him, if it had not been made out; for that the Managers had not yet prov'd that he was a Papiſt.

The Managers deſir'd, before they anſwer'd what my Lord had ſaid, to call a Witneſs or two to the Character of Mr. *Southall*, whom his Lordſhip had endeavour'd to diſcredit.

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Then the Lord *Brook* was ſworn.

He depos'd, That *Southall* was employ'd by his Mother and Brother, and they took him to be an able Man, an honeſt Man, and a good Churchman; and that he receiv'd the Sacrament four Times a Year.

Mr. *William Leviſon-Gower*, a Member of the Houſe of Commons, was ſworn:

A Member of the Houſe of Commons ſwore as a Witneſs.

Mr. *Gower* depos'd, That being a Juſtice of Peace of *Staffordſhire*, he obſerv'd, that *Southall* was a zealous Proſecutor of the Papiſts in that County: That he had apprehended ſeveral Popiſh Prieſts, and convicted one; and that *Southall* had often deſir'd the Deponent's Aſſiſtance for proſecuting Papiſts the moſt effectual Way on the Penal Statutes: And he obſerv'd, That thoſe who believ'd the Popiſh Plot, ſpoke well of *Southall*; and thoſe who did not, ſpoke ill of him.

Sir *William Jones* ſums up the Evidence for the Commons.

Then Sir *William Jones* ſumm'd up the Evidence, and made his Obſervations on it for the Commons: And having mention'd the Proofs that had been produc'd of the Plot in General, he ſaid, He thought there were none now who wou'd pretend not to believe it, but thoſe who were Conſpirators in it, or thoſe who wiſh'd for the Succeſs

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of

of it: And inſiſted, that the Evidence of the Plot in General, wou'd go a great Way to make the Evidence againſt the Priſoner in particular highly credible: That there being Arms provided, and an Army to be rais'd, *&c.* ſhew'd, at leaſt, that there was an Occaſion for ſuch an Officer as a particular Witneſs had ſworn his Lordſhip was to be.

Page 682. He obſerv'd, That tho' his Lordſhip objected that he had not been prov'd a Papiſt, yet it appear'd in Proof, that his Lordſhip went to Maſs, and bewail'd that they had not the free Exerciſe of their Religion, which amounted to ſomething more than Preſumption: That altho' *Dugdale* was doubtful of the Time in one Particular, whether it were in *Auguſt* or *September*; yet, as to that Offer of my Lords, to give him 500*l.* to kill the King, which principally concern'd his Lordſhip to anſwer, he was poſitive as to the very Day his Lordſhip made him the Offer.

He obſerv'd, alſo, That in another Diſcourſe between my Lord and *Dugdale*, his Lordſhip took Notice of the great Loſſes that himſelf and his Friends ſuſtain'd in the King's Service, and reſented, that the King ſhou'd beſtow Places rather on thoſe who had been Rebels and Traitors, than on ſuch as had done him faithful Services; and had ſaid, That next to the Cauſe of Religion, the King's Ingratitude was the greateſt Motive to induce them to take away his Life.

He obſerv'd, That this Piece of Evidence agreed with that of Dr. *Otes*'s, who had depos'd, That he heard his Lordſhip complain, *That the King had deceiv'd them a great while; and that they wou'd bear with him no longer; he ſhou'd deceive them no more.*

As to *Turbervile*, the 3d Witneſs, he thought it very credible, that Father *Turbervile*, and the other Fathers, who uſed to attend his Lordſhip at *Paris*, might give his Lordſhip that Confidence in him, as to propoſe the Murder of the King to him.

Page 683. He anſwers the Priſoner's Objections to the Credit of their Witneſſes.

Then Sir *W. Jones* proceeded to anſwer the Objections that his Lordſhip had offer'd to the Teſtimony of theſe Witneſſes: And firſt, as to what the Lady Már-

Marchioneſs of *Winchester* and Mrs. *Howard* had depos'd, That *Dugdale* had ſworn at Sir *George Wakeman*'s Tryal, that there was a Conſult at *Tixall* in *Auguſt*, where my Lord *Stafford* was preſent: He obſerv'd, That theſe two Ladies differ'd as to one Part of their Teſtimony, one of them depoſing, That *Dugdale* ſwore, that his Lordſhip was to come down in *June* or *July*; and the other, that *Dugdale* ſwore, he did actually come down then: And he thought thoſe Ladies might have ſo much Concern upon them for Sir *George Wakeman*, the Popiſh Phyſician, and in him for other Friends of their Party, that they might not have ſo much Liberty of Thought as to obſerve exactly all Circumſtances ſworn by the Witneſſes; and it was no Wonder if they were miſtaken. As to the Evidence of his Lordſhip's Servants, *Furneſe* and *Leigh*, he thought it impoſſible for them to be ſure of a Negative; and beſides, it was to be conſider'd they were not only of his Lordſhip's Religion, but his Servants too; and therefore no great Weight was to be laid on what they ſaid.

As to what *Sawyer* depos'd, That *Dugdale* ſaid, *he wou'd be reveng'd of my Lord* Aſton, when he was taken up, becauſe he wou'd not own him for his Servant, he thought it did not at all concern this Caſe, for it cou'd not be intended that he deſign'd to be reveng'd on every Man of that Religion, or of every Man that came to my Lord *Aſton*'s Houſe; and as to what *Sawyer* ſaid of *Dugdale*'s taking a Glaſs of Drink and denying his Knowledge of the Plot with Execrations, it was no Objection to his Teſtimony, for he was very far from revealing the Plot at that Time, being apprehenſive his own Life wou'd be endanger'd by it, as might be obſerv'd from *Southall*'s Evidence.

As to the Report of *Godfrey*'s Death, by *Dugdale* at *Tixall*, the *Monday* after he was kill'd, he thought it very poſſible Mr. *Philips* might forget; and as for Mr. *Sambridge*, it was no Wonder he did not hear it, ſo deaf as he was: But they having prov'd by two other Witneſſes, that *Dugdale* did report it on the *Monday*; and two Gentlemen of Quality having depos'd, That it was the common Talk in

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that

that Country a Day or two after; he thought *Dugdale*'s Evidence of this Matter well supported.

As to *Dugdale*'s denying before the Justices of Peace when he was apprehended, That he had any Knowledge of the Plot, that he thought was answer'd by *Southall*'s Testimony.

As to *Robinson*'s Testimony, that *Dugdale* endeavour'd to suborn him, It was highly improbable he thought, that *Dugdale* shou'd make such an Attempt on a Person he was not acquainted with, and especially when the Person whom it was said he wou'd have suborn'd, had no Knowledge of my Lord *Stafford*, whom he was to have sworn against; but however probable that Matter might be, the Character that had been given of *Robinson*, render'd his Evidence very much suspected.

As to *Murral* and *Holt*, who had also depos'd, That *Dugdale* wou'd have suborn'd them, he said, they appear'd to be Men of indifferent Reputations, and therefore little Credit ought to be given to what they said.

As to what Mr. *Lydcot* and *Gifford* depos'd, That *Dugdale* swore at the Tryal of the Five Jesuits, of the Report of *Godfrey*'s Death, he thought *Dugdale* was sufficiently supported in that Matter by other corroborating Evidence, notwithstanding their Testimony.

As to that Objection to *Dugdale*'s Testimony, That he had said *Hobson* told him such a Matter just after the Almoner went away, when it appear'd *Hobson* went away with the Almoner, and so what *Dugdale* depos'd before the Justices, must be false, He desir'd to observe, that this Examination was put in Writing by an unskilful Country Clerk; and besides, that the Words wou'd bear another Sense, *viz.* That *Hobson* told him, (after he came back again) that there was a Design ever since the Almoner went away: That it was a doubtful Expression, and might refer either to the Time he told him of it, or to the Matter he told him of; and being taken in the latter Sense, the Objection fail'd.

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As to that Objection against *Otes*'s Testimony, That being ask'd in the House of Lords whether he

he had any more Persons of Quality to accuse? He said, No. Sir *William* observ'd, that this was after he had accus'd my Lord *Stafford*, and long after his Lordship was committed to the *Tower* upon *Otes*'s Testimony. And as to *Otes*'s accusing the Queen after he had sworn he had no more to accuse, he desir'd to observe, that *Otes*'s Accusation of the Queen was not positive, or of his own certain Knowledge, but Words which he heard spoken in a Room in which he was not himself, tho' he came in afterwards and saw the Queen there; and it was a Question whether what he testify'd wou'd have amounted to a Proof by one Witness: And besides, it might not be clear to *Otes*, whether the Queen was a Person capable of an Accusation, so as to be proceeded criminally against: And farther, That *Otes* had then given an Account of a great many Persons, and his Narrative against them, and of the whole Plot, consisted of a great Number of Particulars; and the Question being ask'd him on the sudden, *Have you any more to say? Or can you speak against any other?* 'Twas very possible, a Man that had spoken so much, and of so many, might not upon an Instant recollect whether he had said all, or against all that he cou'd accuse; and Sir *William* thought it a very severe Construction to hold him perjur'd, because he did not at that Instant remember that Particular of the Queen.

He answers that Objection of *Otes*'s accusing the Queen after he had said he had no more to accuse.

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As to that Objection, that *Otes* had chang'd his Religion more than once, he said, It was no more than what Men of great Learning and Fame in our Church had done before him: That *Chillingworth* was first a Protestant, then a Papist, and afterwards a Protestant again; so that unless his Lordship cou'd charge him with some great Immorality, this alone ought not to hurt his Testimony; and it was happy for the Nation he had thus chang'd, for otherwise they had not come to the Knowledge of the Plot: That he did admit *Otes* was subject to Passion; and it was generally observ'd, that passionate People were not Malicious: He wou'd allow also, that *Otes* was not a Man of the deepest Reach, but then it must

be

be admitted, that one who was not of a deep Judgment cou'd never have invented a Narrative, consisting of so many Particulars, and they so coherent, (if they were false) but must be endu'd with more Subtilty and wicked Policy than upon Tryal they cou'd find him to be; and his Infirmities were rather a Confirmation than any Diminution of the Truth of what he said.

As to that Objection to *Turbervile*'s Testimony, that he alter'd his Affidavit from 72 to 73, *&c.* he observ'd, that it was done the next Morning, upon his own Motion, before any one question'd him for it; and this he thought shew'd his Care and Conscience too, when he was so careful in Matters of the smallest Moment; and that for a Man to mend his Answer in the Court of Chancery, in Point of Time, or other Circumstance, was no Disparagement to him, but rather a Reputation, if he did it before the other Party took Notice of it; and he did not think the worse of a Witness for not being positive after six or seven Years were elaps'd. That as to my Lord's Servant not seeing *Turbervile* at *Paris* with his Lord, and *Turbervile*'s acknowledging he did not know the Boy, he thought there was no great Matter in it: He was introduc'd by his Brother and the other Priests, whom neither Master or Man deny'd a Correspondence with, and he might easily be brought in by them without the Servant's Notice, or *Turbervile*'s knowing of the Servant: The Priests, they were his Guides, and were likeliest to gain him Admittance, not only into my Lord's House, but into his Heart: And he observ'd, That *Turbervile* appear'd to be very stout and very indigent, and therefore a very fit Instrument for the Priests, not unlikely to be recommended by them to my Lord for such a Purpose.

That tho' Witnesses had been brought to shew that *Turbervile* lay in the Lord *Powis*'s House after he return'd from *Doway*, yet they might not be Witnesses of the Reproaches and unkind Usage he might receive from the Family in private; and for his Brother and Sister's Kindness to him on his Return, it amounted to no more than the rai-

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sing

ſing him 7*l.* that they might never ſee him no more, which was not a very expenſive Way of getting rid of a younger Brother who lay upon the Family.

As to Mr. *Lydcot*, who was call'd again, his Arithmetick appear'd ſo bad, and he ſo confounded Matters with his new (Romiſh) Stile, that it made it ſuſpected, whether he was ſo good a Proteſtant as he pretended; and, 'till he produc'd the Book he promis'd, they had no Occaſion to ſay any more to him.

As to what *John Porter* and Mr. *Yalden* ſaid: That *Turbervile* deny'd his having any Knowledge of the Plot, and particularly as to his damning himſelf, becauſe he cou'd make no Diſcovery, *&c.* he thought that this look'd like ſomething prepar'd for the Purpoſe, it being improbable a Man ſhou'd uſe thoſe horrid Oaths, who had ſuch a Mind to be a Diſcoverer, and thereby diſable himſelf ever to be ſo, by ſwearing he knew nothing: And to the Teſtimony of *Porter* and *Yalden* he alſo oppos'd the Evidence of *Powel* and *Arnold*, to whom *Turbervile* had diſcover'd ſome Knowledge of the Matter before the Time of the pretended Diſcourſe with *Yalden*.

As to that Miſtake in *Turbervile*'s Affidavit, that my Lord came Home by the Way of *Calais*, *Turbervile* cou'd not poſſibly be thought to ſpeak his own Knowledge, becauſe in the ſame Affidavit he ſays, he came away before my Lord: But he confeſs'd, if *Turbervile* had underſtood how ſtrict and nice a Man ought to be in expreſſing himſelf in an Affidavit, he wou'd have ſaid, My Lord came by *Calais*, and that Count *Grammont* came with him, *as he had been told*, or, *as he underſtood*: But all they cou'd ſay againſt him in this Particular, he thought, was, That the Affidavit was not ſo cautiouſly worded as it ſhou'd have been, but that it did certainly diſcloſe ſo much in itſelf, that he did not take upon him to ſwear his own Knowledge; ſo that it was rather want of Skill how to expreſs himſelf properly, than any Corruption in his Oath, or a forſwearing himſelf. Page 688.

Nor was it so strange as my Lord wou'd make it, that *Turbervile* shou'd have lost the Letter his Lordship sent him, that he wou'd go by *Calais*, considering *Turbervile*'s Circumstances, and how he had been toss'd about for or four five Years last past; and that *Mort* did not a little corroborate *Turbervile*'s Testimony, who being at *Diep* with *Turbervile*, was told then by him, that his Lordship wou'd go by *Calais*, and that if he wou'd make Haste thither he might go over with him.

He added, That they had brought several Persons of Quality to testify the Reputation of both *Dugdale* and *Turbervile*; and tho' it were admitted that *Dugdale* did not sometimes pay Tradesmen duly, that cou'd be no Impeachment of his Honesty; he believ'd there might be some Lords there whose Stewards were very honest Men, and yet the Tradesmen such Lords dealt with were not always readily paid.

That it appear'd by the Evidence of *Southall*, that *Dugdale* did at first discover much the same in Substance, against the Prisoner, as he did now: From whence he observ'd, That 'twas impossible it cou'd be a Contrivance among the Witnesses to depose the same Crimes against this Lord; for *Otes* did not know *Dugdale* 'till he was brought up, which was long after *Otes*'s Accusation of this Lord.

Page 689. And to what he had said before of my Lord's being prov'd a Papist, he added, That he understood his Lordship deserted the House of Peers, because he wou'd not take the Test appointed by the late Act: But if that shou'd be admitted for this Time, that his Lordship was a Protestant, he wou'd not deserve a whit more Favour from their Lordships.

And altho' my Lord wou'd have it look'd on as a Presumption of his Innocence, that he did not fly for it, when he had seven Posts Time to make his Escape: He said, it was true, he might have fled; and so might *Coleman*, who left so fatal an Evidence against himself and all his Party under his own Hand; and so might the Five Jesuits have escap'd too, but they hoped the Oath of Secrecy,

and the other Means they had uſed to conceal their damnable Deſigns, wou'd have prevented the revealing them.

As to that Objection, That *Otes* did not produce one of thoſe many Letters he mention'd to come from my Lord *Stafford*, he anſwer'd, Thoſe Letters were not written to *Otes*, nor did they belong to him, nor was it poſſible that the Letter of my Lord's, which *Otes* deliver'd in at the Poſt-Houſe, cou'd now be produc'd by him.

He obſerv'd farther, That his Lordſhip had had that Advantage towards making his Defence that never any Man had before him; for the Evidence had been printed and publiſh'd to the World before it was given in Court, which he thought very unfit to be done; becauſe the diſcloſing the Evidence beforehand was the Way to have it falſify'd and corrupted, and yet he appeal'd to their Lordſhips if their Evidence had receiv'd any conſiderable Contradiction.

He concluded, That the Evidence was ſo ſtrong that he thought it admitted of no Doubt, and the Crimes ſo foul, that they needed no Aggravation; they were not only Offences againſt his Majeſty, but againſt the Proteſtant Religion, for the Extirpation of all Proteſtants out of the three Kingdoms was intended; at leaſt, all that dar'd to have continu'd ſo muſt either have left their Country or have been burnt in it. —— That it was a Deſign that appear'd with ſo dreadful a Countenance to their Lordſhips, and the whole Nation, that he need be at no Pains to make them apprehend it; and as the Matter was fully prov'd, he was ſure their Lordſhips wou'd do that Juſtice to their King and Country, as to give Judgment againſt theſe Offenders, which wou'd not be only a Security to the Commons, but a Terror to all others againſt committing the like Offences. Page 690.

The Priſoner takes Notice of ſome Miſtakes in Sir *W. Jones*'s Obſervations.

The Lord *Stafford* deſir'd to obſerve ſome Miſtakes and Omiſſions of Sir *William*'s: As firſt, that he omitted mentioning that Mr. *Turberville*'s Brother depos'd, that he came to the Lord *Powis*'s in 71. 2dly, That his Lordſhip appear'd to be

The Teſt, when firſt impos'd.

a Papiſt, becauſe he had not taken the Teſt; whereas the Teſt was requir'd but ſince he was in the Tower. 3dly, That he ſaid he had the Letter in his Pocket, which he produc'd, whereas it was put into his Hand while it was at the Bar. 4thly, That *Hobſon* did not go out of *England* with the Almoner. 5thly, That his Lordſhip ſaid *Otes* was an infamous Perſon, becauſe he went to an idolatrous Church; whereas his Lordſhip only ſaid, it was adjudg'd to be idolatrous by Act of Parliament.

Mr. *Powel* anſwers that Part of his Lordſhip's Defence as to the Improbability of his being in the Plot.

Then Mr. *Powel*, another of the Managers, undertook to anſwer the ſeveral Reaſons from whence his Lordſhip wou'd infer a great Improbability that he ſhou'd be guilty of theſe Treaſons: And firſt, as to theſe ſolemn and repeated Proteſtations that his Lordſhip made of his Innocence, he ſaid, Whatever Regard their Lordſhips might have to the Proteſtations of a Peer in another Caſe, yet now their Lordſhips ſate in the Seat of Juſtice they wou'd proceed according to the Evidence, *ſecundum allegata & probata*, and hoped their Proofs were ſo clear as to leave no Room to believe his Lorſhip's Proteſtations: As to that other Preſumption of his Innocence, that he did not fly for it; that might proceed as well from a Confidence of the Strength of his Party, as from a Confidence of his Innocence; and whether the Power and Prevalence of the Popiſh Party, at that Time, might not reaſonably create ſuch a Confidence in this noble Lord, he left to their Lordſhips Judgment. —— That they did conceive the Murderers of Sir *E. Godfrey* had ſuch Confidence in the Favour and Protection of ſome of their Party, that they thought themſelves able to out-face Juſtice, and they believ'd the Party intended it as an Example to deter all Men from ſo much as meddling to take an Examination concerning this horrid Plot.

And as his Lordſhip had obſerv'd, out of my Lord *Coke*, that a Judgment ought to be form'd, in theſe Caſes, from the Nature and Circumſtances of the Fact, with Reference to the Perſon accus'd, whether they were likely to induce or

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deter him from ſuch an Attempt; and his Lordſhip had rais'd ſome Arguments from the whole Tenour of his Life, and had taken Occaſion to mention his own and his Anceſtors Services to their King and Country: He deſir'd their Lordſhips, in Anſwer to this, to conſider, that however his Lordſhip was pleas'd to diſown his being a Roman Catholick at preſent, he thought that had been ſufficiently prov'd in the Courſe of their Evidence: And as a miſguided Conſcience cou'd engage the beſt Men in the worſt Actions, ſo he thought the Principles of that Religion were ſuch, as were more likely to pervert Men from their Duty and Allegiance than any other Religion or Perſwaſion whatſoever. Page 691.

The laſt Thing he took Notice of, was his Lordſhip's affirming the Doctrine of Killing and Depoſing Princes to be a private Opinion, whereas the moſt celebrated Writers of the Church of *Rome* had publickly avow'd and maintain'd that Doctrine, and that the Pope and the Church of *Rome* never fail'd to avow thoſe Actions when they were done; he acknowledg'd that many private Writers did hold the contrary Opinion, but he look'd upon it as a Piece of Policy and Artifice in that Church to leave this Point in ſome meaſure undetermin'd, that ſo they might make Uſe of it as Occaſion ſerv'd; for if it ſucceeded, then it was own'd and juſtify'd; but if it miſcarry'd, then the Doctrine was ſaid to be but a private Opinion, and the Plot but the Practice of particular Perſons that were either deſperate or diſcontented: And he deſir'd that their Lordſhips wou'd take the whole into their Conſideration, and do thereupon what ſhou'd be agreeable to Juſtice.

Then the Managers proceeded to anſwer ſuch Objections as his Lordſhip had made in Point of Law.

1ſt Objection. That there was no Example or Precedent that Proceedings criminal ever continu'd from Parliament to Parliament, and this had continu'd there. Page 679. Page 691. His Lordſhip's Exceptions in Point of Law.

2d, That no Man ought to be proceeded againſt capitally, but upon an Indictment found by a Grand Jury.

3d, That there was no Overt Act laid in this Impeachment.

4th, That they were not competent Witneſſes who were produc'd againſt him, becauſe they ſwore for Money.

5th, That there were not two Witneſſes to any one Point.

The Managers anſwer them.

Mr. Serj. *Maynard* ſaid, As to the firſt Objection, he did acknowledge this Charge was preſented in another Parliament, but he held that what was once upon Record in Parliament, might at any Time after be proceeded upon: And that in a Caſe of this Nature, where the Life of the King, their own Lives, and their Religion, were at Stake, if there was no Precedent he hoped they would make a Precedent.

As to the 2d, he ſaid, In Impeachments of the Commons there was no Neceſſity of an Indictment.

That he wonder'd at the 3d Objection, it being charg'd and prov'd that he had receiv'd a Commiſſion, been at ſeveral Conſults, and hired Perſons to kill the King, which were ſufficient Overt Acts.

Page 652.

Sir *William Jones* added, As to the firſt Objection, that it was true that there was a general Impeachment of the Priſoner in the long Parliament, and another particular Impeachment in the laſt Parliament, to which the Priſoner had pleaded; and that this was now the Third Parliament in which he was brought to his Tryal; But that it had been reſolv'd by their Lordſhips, and ſent down to the Commons, and it was enter'd in their Books as the Law and Conſtitution of Parliaments, *That not only Impeachments, but all judicial Proceedings, continue from Parliament to Parliament in the ſame State that they were in at the riſing of the laſt Parliament.*

Impeachments, and all judicial Proceedings, remain in the ſame State they were, notwithſtanding the Diſſolution of the Parliament.

As to there being but one Witneſs to one Overt Act, it had been reſolv'd in the Caſe of Sir *Henry Vane* and others, that tho' there muſt

be

be two Witneſſes to prove the Treaſon, yet there needed no more than one to one Act, and another to another, if the ſeveral Acts fell under the ſame Head of Treaſon, and they were not Treaſons of a different Species.

Sir *Francis Winnington* added, As to the firſt Objection, That one Reaſon why an Impeachment was not diſcontinu'd by a Diſſolution of the Parliament was, becauſe it was the Cauſe of the Commons of *England*, who only charg'd their Repreſentatives in a new Parliament.

As to the 2d Objection, That this Proſecution ought to have been upon an Indictment, he ſaid, The Houſe of Commons were the Grand Inqueſt of the Nation, and it were ſtrange if an Accuſation by them ſhou'd not be as effectual as the finding of a particular Jury: That, indeed, when a Peer came to be try'd by Commiſſion, or in Parliament, when it was not at the Proſecution of the Commons, there an Indictment is firſt to be found in the proper County, (where the Fact was) and brought up before the Peers by *Certiorari*, and upon that they proceed; but whether the Party be Peer or Commoner, if he be impeach'd, by the conſtant Uſage of Parliaments, the Lords proceed to Tryal, and give Judgment thereupon without an Indictment found.

An Indictment not neceſſary where there is an Impeachment.

As to the 3d Objection, he held, That Words themſelves, if they ſignify an Intention to commit a treaſonable Act againſt the Prince's Life, are a ſufficient Overt Act, and a legal Evidence of Treaſon.

Page 693. Words an Overt Act where they diſcover a Deſign againſt the Prince's Life.

As to the 4th Objection, That they were incompetent Witneſſes becauſe they had taken Money to ſwear, that was purely a Matter of Fact, which his Lordſhip ought to prove, and then they wou'd give him an Anſwer.

L. H. S. If it were only Money to maintain them, that will not be an Objection.

Lord *Stafford*. I ſubmit to your Lordſhips, whether *Otes* and the reſt have not had great Sums of Money, beſides 10*l.* a Week for their Charges: And I deſire my Council may be heard as to the Objections I have made.

The Allowance made *Otes* by the Government.

Where a Prisoner desires Counsel, as to Matter of Law, the Thing must be a Doubt to the Court as well as himself.

Sir *William Jones.* If a Prisoner desire Counsel in a capital Case, he must not only alledge Matter of Law to introduce that Request, but he must alledge such Matter as the Court is in Doubt of; now if your Lordships are not satisfy'd that it is the Law of your House, that Proceedings upon Impeachments do continue from Parliament to Parliament, we cannot answer that; it lies in your Lordships Breasts, we may not argue that, because it concerns the Law and Rules of Parliament.

As to that Objection, that his Majesty allow'd a Maintenance to his Witnesses, there was nothing in it; for that every Man allow'd his Witnesses a Maintenance, tho', perhaps, every one did not give so large an Allowance as the King, his Dignity not being so great. And if his Majesty had been bountiful to his Witnesses, what is that to the Cause of the Commons who are Prosecutors; he can shew no Bribery in them, as had been prov'd against himself.

Every one may maintain his Witnesses.
Query, If those large Allowances made *Otes, Bedloe, &c.* were not found Objections to their Testimony.

Page 694.

L. H. S. What Hurt can there be in hearing my Lord's Council.

Counsel may not argue as to the Law and Course of Parliaments.

Sir *Fr. Winnington.* In the House of Commons we never suffer Counsel to tell us the Course of our House, or the Law of Parliament; if your Lordships think fit to allow it, 'tis in your own Power; but we who are intrusted by the Commons have no Direction to consent to such a Thing.

L. H. S. We will hear Council to that Point, whether every Overt Act ought to be prov'd by two Witnesses.

[Then Mr. *Wallop* and Mr. *Saunders*, of the *Middle-Temple*, and Mr. *Hunt*, of *Gray's-Inn*, appear'd, being assign'd of Counsel for the Prisoner.]

Mr. *Wallop* desir'd they might have Time to prepare an Argument, for that they were not ready to speak to it at present.

Whereupon the Lords adjourn'd to their House above, and in about an Hours Time return'd.

Page 695.

The Lord High Steward then acquainted the Prisoner that their Lordships had resolv'd, that the Judges shou'd deliver their Opinions as to

that

that Point concerning the Neceſſity of two Witneſſes to every Overt Act.

The Judges having conſulted together, my Lord Chief Juſtice *North* deliver'd his Opinion firſt, (the Lord Chief Juſtice *Scroggs* being abſent) *viz.* That if there be ſeveral Overt Acts, or Facts, which are Evidences of the ſame Treaſon, and if there be one Witneſs to prove one ſuch Overt Act at one Time, and another Witneſs to prove another Overt Act at another Time, both the Acts being Evidences of the ſame Treaſon, theſe were two ſufficient Witneſſes of that Treaſon, and wou'd maintain an Indictment or an Impeachment of Treaſon; that he never knew any Doubt made of it in any inferiour Court of Juſtice.

The Judges deliver their Opinions, that two Witneſſes to every Overt Act are not neceſſary, but one to one Overt Act, and another to another is ſufficient.

Of which Opinion were all the reſt of the Judges preſent. And Mr. Baron *Atkins* added, that this Queſtion was ſtarted in the Caſe of Sir *Henry Vane* and others, and was not thought worthy of Debate; and if the Law ſhou'd be held otherwiſe, it wou'd affect thoſe Judgments which had been given on this kind of Proof, and the Conſequence muſt be, that thoſe Perſons, who were executed on thoſe Judgments, ſuffer'd illegally; and therefore he was of Opinion, that it was not requiſite there ſhou'd be two Witneſſes to every Overt Act.

My Lord *Stafford* ſaid, he hoped the Reaſon given by Mr. Baron *Atkins* for his Opinion, (*viz.*) *That if it were not ſo, a great many Perſons muſt be acknowledg'd to have ſuffer'd unjuſtly*, wou'd not weigh with their Lordſhips or any Body elſe. Page 696.

The Lord High Steward anſwer'd, That was but one Reaſon amongſt many; but the true Reaſon was, that if the Law were otherwiſe, there wou'd be great Safety in conſpiring the Death of the King.

Then the Lords adjourn'd to their Houſe above, and ſent a Meſſage to the Commons, (who were likewiſe withdrawn to their Houſe) that they wou'd proceed in the Tryal on *Monday* next. The Lords adjourn.

Monday

6th Day.

Monday the 6th of *December*, 1680.

The Lord *Stafford* petitions the Lords to be heard again.

The Court being set, the Lord High Steward order'd a Petition, which the Lord *Stafford* had sent to the House of Lords, to be read; importing, that his Lordship had something farther to offer, which he hoped wou'd clear him.

The Petition being read, the Lord High Steward acquainted the Prisoner, that upon this Petition their Lordships were come in Order to hear what he had to offer.

The Lord *Stafford* having return'd their Lordships his Thanks for this Favour, said, He observ'd, that by their Lordships Order, his Counsel were not to be heard touching the Continuance of Impeachments from Parliament to Parliament, but he hoped he might, without Offence, offer his own Conceptions about it, and conceiv'd, in that Order, their Lordships did not say they did or did not continue; that had their Lordships given any Judgment in it, he shou'd have acquiesc'd, but he hop'd their Lordships wou'd be of Opinion that this did not continue, for that one of the Managers had said, *If there were no Precedents their Lordships wou'd make a Precedent*; from whence he inferr'd, there was no Precedent yet. 2dly, For that he never read of any that were prosecuted by Impeachment without an Indictment, and he hop'd their Lordships wou'd keep to that great Maxim of their Noble Ancestors, *Nolumus leges Angliæ mutare*, and whether this were not a Change of the Law, he submitted to their Lordships. 3dly, He thought Words cou'd not amount to an Overt Act, and tho' their Lordships had heard the Judges Opinion as to there being but one Witness to an Overt Act, he did not observe their Lordships had declar'd their own Judgments one Way or other; that the proving a general Plot of the Papists did not concern him; he hoped their Lordships wou'd not censure him as a Papist upon common Fame, but proceed *secundum allegata & probata*, and he thought there was not one Word of Proof that he was a Papist. Then his Lordship was pleas'd to repeat some of his former

He repeats some Proofs of Law he had insisted on before.

Page 697.

Observa-

Obſervations on the Evidence. He goes on, and ſays, great Importunity had been uſed by his Friends, eſpecially by his Wife and Daughter, that he wou'd diſcover what he knew of the Plot, and he wou'd now, in the Preſence of God, declare what he knew.

He ſaid, he did believe, that ſince the Reformation, thoſe of the Church of *Rome* had contriv'd ſeveral wicked Plots; he did admit there was a Plot by *Babbington* and others in Queen *Elizabeth*'s Time, but whether it extended to the taking away of the Queen's Life he cou'd not tell; he did acknowledge alſo, that there was another Plot call'd the Earl of *Weſtmoreland*'s Plot, which was a very ill Deſign; but as for the poiſoning of the Queen's Saddle, and the like, he look'd upon them to be but Stories.

The Priſoner declares his Opinion of the ſeveral Plots charg'd on the Papiſts ſince the Reformation.

In King *James*'s Time, he ſaid, he admitted there was a Plot by Men of both Perſwaſions, wherein the Lords *Grey*, *Cobham*, *Brook*, and Sir *Walter Raleigh* were concern'd, upon which Sir *Walter Raleigh* was beheaded, and the Lords died in the Tower: Then follow'd that execrable Treaſon, the Powder-Plot, for which he thought the Wit of Men or Devils cou'd not invent an Excuſe, (he always abhorr'd the Perſons concern'd in it:) That the Conſpirators confeſs'd it, and begg'd Pardon of God and the King, and all good Men, for it.

He ſaid, that ſince his Majeſty's Reſtoration, he had been indulgent to all Diſſenters, and particularly to thoſe of the Romiſh Church, who were allow'd the Exerciſe of their Religion in their private Houſes; and it was not long ſince their Lordſhips allow'd all Diſſenters from the Church of *England* to give their reſpective Reaſons why the Penal Laws, they are obnoxious to, ought to be repeal'd, and why, as well thoſe of the Church of *Rome*, as the reſt, ſhou'd have ſome kind of Toleration: But it came to nothing.—— However, after this, he did believe that thoſe of all Perſwaſions had their Conſultations, among themſelves, how to obtain a Toleration; and his Lordſhip was of Opinion that this Nation cou'd never

A Toleration granted by King *Charles* II. to all Diſſenters.

The Diſſenters permitted to offer their Reaſons to the Houſe of Lords againſt the Penal Laws.

never be happy till an Act of Parliament pass'd to that Effect; that it was his Opinion then, and he did endeavour it, all he cou'd, that the dissenting Protestants might have a Comprehension, and the other a Toleration; and by the Commons Votes there appear'd such a Thing was designing as a Comprehension: That his Lordship did observe, from Mr. *Coleman*'s Letters, he was endeavouring, by procuring Money from *France*, to keep off a Parliament and gain a Toleration, which his Lordship did not think justifiable by Law, tho' how far it was Criminal he wou'd not pretend to say; *Coleman* had paid severely for it.

A Comprehension design'd. Page 698.

That from *Coleman*'s Letters, and other Things that appear'd in Print, he did believe there had been some Consultations to obtain a Toleration; and had he known as much before as he did since he came to the Tower, he might have prevented many Things: And had he known of any such Design as *Coleman*'s Letters hinted at, he wou'd not have continued in *England*. That as for that damnable Opinion of King-killing, if he were of any Church that own'd such a Principle, he wou'd leave it; that he knew not a Tittle more of the Plot, and if he did he shou'd hold himself bound to declare it: That he was under great Disadvantages, in having Gentlemen who were Scholars, and Men of Learning, and of great Understanding in the Law, reply upon him who was defective in all these Particulars; and therefore hoped their Lordships wou'd not conclude him upon what either they or he had offer'd, but be pleas'd to debate the Matter among themselves, and be as well his Counsel as his Judges.

The Prisoner offers a Paper to the Court, which the Managers oppose the reading of.

Then the Prisoner deliver'd in a Paper, which he desir'd their Lordships wou'd read; for he said he was so disturb'd and confounded with the Noise and Shouting of the barbarous Rabble, that he knew not how to say any Thing pertinently.

Sir *Thomas Lee* oppos'd the Clerk's reading the Paper, as being an unprecedented Thing: Then the Lord High Steward directed the Prisoner to raise

raiſe his Voice and read his Paper himſelf, which he did, *but it containing nothing material, which his Lordſhip had not offer'd before, is not inſerted here, it being our Buſineſs to avoid all unneceſſary Repetitions.*

The Priſoner again inſiſted to have his Coun- Page 699.
cil heard, but the Lord High Steward told him, that as to there being two Witneſſes to every Overt Act, the Judges had deliver'd their Opinions, and there was no more to be ſaid in it; and as to the Continuance of Impeachments from Parliament to Parliament, they ſhou'd debate that among themſelves, and wou'd not ſuffer Counſel to debate the Conſtitutions of Parliaments; and as to Words being an Overt Act, they had no ſuch Caſe now before them; there was a great Difference between bare Words and Perſwaſions, by Promiſes and Rewards, to kill the King; there was no Doubt but the latter was a very great Overt Act.

Then his Lordſhip repeated ſome other Parts Page 700.
of his Defence, and concluded that he had now offer'd what he thought proper upon the Occaſion; and thus much, he thought, he ow'd to the Memory of that great King, who call'd him up to the Houſe of Peers forty Years ago, that it might not be ſaid he did fly in the Face of his Son in ſo horrible a Manner as the Charge ſet forth: That he ow'd thus much to his Father and Mother, for he wou'd not have them, and the Family from whence he ſprung, diſhonour'd by having it ſaid, that any that bore their Name had committed Treaſon: That he ow'd thus much to his Wife, who deſcended from that great unfortunate Man, *Stafford* Duke of *Buckingham*, who was cut off in the Reign of *Henry* VIII. that ſhe was Heireſs to all that great Eſtate, which wou'd have amounted to 200,000 *l.* a Year at this Day, and wou'd have come to her, if it had not been for the Attainder of that Duke; and he wou'd not have it ſaid ſhe was the Widow of a Traitor: That he ow'd thus much to his Children, his Friends, and Relations, but above all, to God Almighty, who entruſted

truſted him with what he had; and he hoped there was not one even of the Houſe of Commons but after this Evidence wou'd clear him: That he had clear'd himſelf before the Lords, and he hoped he ſhou'd not be run down by a wicked Rabble: That thus it began in the late Times againſt my Lord *Strafford*, and ſo continu'd till it ended in the moſt execrable Act that ever was done: And he did again, in the Preſence of God, Angels, their Lordſhips, and all Men, again declare, he knew nothing of the Plot: That he believ'd thoſe of the Romiſh Religion had ſuch Meetings as he mention'd before, but he never was at any of them, nor did he know what was done there; and he did, with all Submiſſion, reſign himſelf to their Lordſhips Juſtice.

His Lordſhip concludes with ſolemn Proteſtations of his Innocence.

The Managers reply'd, as to the Arguments his Lordſhip had drawn of his Innocence from the Obligations he lay under, that the Queſtion was, Whether he had done it or no; and if he had, his Obligations were an Aggravation of his Crime, not an Excuſe: As to the Noiſe and Shouts of the People, that had occaſion'd any Diſturbance to his Lordſhip, and which his Lordſhip complain'd of, he cou'd not mean or impute it to them, for they had treated his Lordſhip with that Reſpect that became his Dignity, and the Diſcretion that ought to be in the Managers of the Houſe of Commons: But his Lordſhip's Diſtraction rather proceeded from thoſe Friends, or Counſel of his, who put thoſe many Papers into his Hand containing the ſame Matter, which he read over and over again, and this, indeed, was enough to diſtract any Man. —— That had not the Cauſe been of an extraordinary Nature, they ſhou'd have ſtood upon it that the Priſoner ought not, after the Proſecutors had concluded, to have taken a Liberty of reading and repeating what he had ſaid over and over again; indeed, there were a Sort of Men who wou'd lay Hold of any Pretences to cavil at their Proceedings, and therefore they had permitted his Lordſhip to take all that Liberty, that his Party might have no Colour of Complaint.

The Managers reply to what his Lordſhip laſt offer'd.

Page 701.

Then

Then the Lords adjourn'd to the Parliament Chamber, and the Commons withdrew to their Houſe, where they receiv'd a Meſſage from the Lords that they wou'd proceed in the Tryal of the Earl of *Stafford* at Eight the next Morning. The Lords adjourn.

Tueſday the 7th of *December*, 1680. 7th Day.

The Lords being ſet, and the Lord High Steward on the Wool-pack, *Garter*, principal King at Arms, the Uſher of the Black Rod, and Nine Maces attending him, the Lord High Steward took the Votes of the Peers, beginning with the *puiſne* Baron, and ſo upwards, the Priſoner (as the Law requires) being abſent. The Lord High Steward takes their Lordſhips Votes. Page 702.

The Lord High Steward, having taken and number'd the Votes, declar'd, that Thirty one of the Lords thought the Priſoner Not Guilty, and that Fifty five had found him Guilty. [Among the latter were the Lord High Steward, and Prince *Rupert*, Duke of *Cumberland*.] Thirty one find Not guilty, and 55 Guilty.

Then the Lieutenant of the Tower was commanded to bring his Priſoner to the Bar, which being done, the Lord High Steward acquainted him, that their Lordſhips found him guilty of the Treaſons whereof he was impeach'd; whereupon the Lord *Stafford* ſaid, *God's holy Name be prais'd for it*: And it being demanded what he had to ſay why Judgment of Death ſhou'd not paſs upon him according to Law, his Lordſhip anſwer'd, He confeſs'd he was ſurpriz'd, he did not expect it, but he conceiv'd he had ſomething to offer that might reſpite Judgment; and firſt, that he was not commanded to hold up his Hand at his Arraignment. 2d, That there was nothing more in the Act of the 25. *Edw.* 3. on which he was impeach'd, than in the 13th of the King, in which laſt there was a Proviſo, that a Peer found guilty of the Crimes therein mention'd, ſhou'd only loſe his Seat in Parliament; he thought there was no other Puniſhment, and he deſir'd their Lordſhip's Opinion on theſe Points.

After which, the Lords adjourning to the Parliament Chamber, the Commons withdrew to their Houſe, and their Speaker having reſum'd the Chair, the whole Body of their Houſe went The Lords adjourn to their Houſe. Page 703.

with

The Commons, with their Speaker, go up to the Lords House and demand Judgment.

with their Speaker to the Bar of the House of Lords to demand Judgment of High Treason against *William* Vicount *Stafford*, upon the Impeachment of the Commons, *&c.*

The Judgment for High Treason must be in the usual Form.

The Commons being return'd to their House, the Lords took into Consideration what Judgment shou'd be given, and it was mov'd that he might be beheaded; but the Opinion of the Judges being demanded, as to the Consequence of such a Sentence, they answer'd, that the Judgment for High Treason, in Law, was to be drawn, hang'd, and quarter'd; and in the Courts below they cou'd take Notice of no Judgment for High Treason but that.

Or the King loses his Forfeitures, *&c.*

Sir *Cr. Levins*, his Majesty's Attorney General, also having obtain'd Leave to be heard by the House, upon that Point, said, That if any other Judgment was given, it wou'd be prejudicial to his Majesty: Whereupon the Lords resolv'd that the usual Sentence, in Cases of High Treason, shou'd be pronounc'd; and a Message was sent to the Commons, that their Lordships were going, forthwith, into *Westminster-Hall*, to give Judgment against *William* Vicount *Stafford*.

The Lords and Commons being return'd to their Places in *Westminster-Hall*, and the Lord High Steward being attended as before, eight Serjeants at Arms, with their Maces, kneel'd, and the ninth made Proclamation for Silence: After which, the Lord High Steward made a Speech,

The Lord High Steward's Speech to the Prisoner before Judgment.

wherein he acquainted the Prisoner, that their Lordships had taken into Consideration what he had offer'd in Arrest of Judgment; and that it was no essential Part of the Tryal that the Prisoner shou'd hold up his Hand; that the Court often proceeded against such as refus'd to hold up their Hands; and as to the Provisoes in the 13. *Car.* if his Lordship had been indicted upon that Statute, as he was not, they wou'd not be applicable to his Lordship's Case. —— He said, his Part that remain'd was very sad, being to give Sentence of Death upon a Man, which he had never done before, and he was extremely sorry he must begin with his Lordship. ——

A Peer need not hold up his Hand.

That

That there had been a general Conſpiracy of the Papiſts, wherein the Death of the King was a principal Part, he thought was apparent beyond all Poſſibility of doubting; and as the Plot in general was moſt manifeſt, ſo his Lordſhip's Part in it, he ſaid, was too plain: And having beſtow'd ſome pious Exhortations on his Lordſhip, as to his Preparation for Death, he pronounc'd the uſual Sentence in Caſes of High Treaſon.

Page 704. Judgment pronounc'd to be drawn, hang'd, and quarter'd, &c.

The Priſoner deſir'd his Friends and Relations might come to him, whereupon the Lord High Steward acquainted him, that their Lordſhips wou'd be humble Suitors to his Majeſty to remit all the Puniſhment but the taking off his Head.

His Majeſty order'd the Lord High Chancellor to iſſue a Writ, under the great Seal, to the Lieutenant of the Tower, to deliver the Priſoner on the 29th of *December*, 1680, between Nine and Eleven in the Forenoon, to the Sheriffs of *London* and *Middleſex*: And another Writ to the Sheriffs to receive him into their Cuſtody, and lead him to the uſual Place, upon *Tower-Hill*, and there cauſe his Head to be cut off.

The King iſſues a Writ to the Sheriffs to execute the Priſoner, by cutting off his Head only.

There were two Writs deliver'd to the Sheriffs, both exactly alike; one was deliver'd to them in *London*, and the other in *Middleſex*: But the Sheriffs doubting whether this was a ſufficient Authority for their beheading him only, when he had Sentence to be drawn, hang'd, and quarter'd, *&c.* they petition'd the Lords, that ſince they had not receiv'd any Command from their Lordſhips for executing the ſaid Judgment, they wou'd pleaſe to make ſuch Order therein as ſhou'd be agreeable to Right and Juſtice; whereupon their Lordſhips declar'd that their Scruples were unneceſſary, and that the King's Writ ought to be obey'd.

Page 705. *Slingsby*, *Bethel*, and *Henry Corniſh*, Sheriffs, apply to the Lords, who declare the King's Writ ought to be obey'd.

Execution varies from the Judgment.

The Sheriffs alſo made Application to the Commons, who thereupon reſolv'd that they were content that the ſaid *William*, late Vicount *Stafford*, ſhou'd be executed, by ſevering his Head from his Body only.

And he was executed, by ſevering his Head from his Body.

He is beheaded.

Page 706. *The Proceedings of the Court of King's Bench, in the Case of* EDWARD FITZ-HARRIS, *Esq; in* Easter *Term*, 33 Car. 2. 1681.

Wednesday the 27th of *April* 1681, the Grand Jury for the County of *Middlesex* were sworn. And after Mr. Justice *Jones* had given the Charge, Mr. Attorney desir'd, that some of the Grand-Jury, who serv'd for the Hundreds of *Edmonton* and *Gore*, might be present at the Swearing of the Witnesses on an Indictment against *Edward Fitz-Harris*, a Prisoner in the *Tower*, which was granted: And the Grand-Jury having some Scruples about finding the Bill, Mr. Justice *Jones* directed them to attend the next Day, when the Court wou'd be full.

Thursday the 28th of *April*, the Grand-Jury came to the Bar, and Mr. *Michael Godfrey*, (Brother to Sir *Edmund Bury*) who was Foreman of the Jury, desir'd, that before they proceeded upon the Indictment, that *Fitz-Harris* might be examin'd about his Brother's Death, of which he suppos'd he knew much, and mov'd the Court to grant an *Habeas Corpus* to fetch up *Fitz-Harris*: Then he deliver'd in a Paper in Behalf of himself and the rest of the Grand-Jury; importing, that the Day before, they heard Sir *William Waller*, and others, sworn in Court, in order to their giving Evidence against *Fitz-Harris*, who in the late Parliament at *Oxford* was impeach'd by the House of Commons, in the Name of themselves and of all the Commons of *England*, of whom the Grand-Jury were part, They therefore desir'd the Opinion of the Court, whether it were lawful and safe for them (in Case an Indictment of the said *Fitz-Harris* shou'd be brought before them) to proceed to examine Witnesses in Reference to the said Indictment, or any Ways meddle with it, notwithstanding the said Impeachment and the Votes of the House of Commons upon it.

The Grand-Jury doubt whether one who is impeach'd for Treason may be indicted for Treason. Page 707.

The

The Lord Chief Justice answer'd, That as to the Impeachment of the Commons, which was not receiv'd by the Lords, and the Vote of the Commons, that he shou d not be try'd by any inferior Court, they were bound by their Oaths to enquire, if any such Indictment was exhibited to them, and ought not to take Notice of any such Impeachment offer'd to the Lords, or of any such Votes in the House of Commons, if any such there were, for they cou'd not excuse them who were sworn to enquire of the Matters given them in charge; and if they had Evidence enough given them to satisfy them that the Indictment was true, they were to find it; and the Court ought to proceed upon it according to Justice; and that this was the Opinion of all the Judges of *England*, who had assembled and debated this Matter.

The Court resolve, that he might be indicted, tho' the Commons had voted he shou'd not be try'd by any inferior Court.

Then the Grand-Jury withdrew, and found the Bill.

Friday the 29th of *April* 1681, Sir *Thomas Stringer*, the King's Serjeant, mov'd for an *Habeas Corpus* to bring up the Body of *Fitz-Harris*, to be examin'd by the Court about the Death of Sir *E. Godfrey*, which was granted.

Saturday the 30th of *April*, Mr. Serjeant *Stringer* inform'd the Court that *Fitz-Harris* attended, and desir'd he might be examin'd of Sir *E. Godfrey* before he was arraign'd, but the Court directed he shou'd be arraign'd first.

Mr. *Fitz-Harris* acquainted the Court, That he had been close Prisoner for ten Weeks, not having been permitted to see any one, and desir'd he might advise with his Friends.

Mrs. *Fitz-Harris* put a Plea into her Husband's Hand, and advis'd him to plead to the Jurisdiction of the Court: And Mr. *Fitz-Harris* desir'd it might be read by the Clerk; but was told by the Court, he must first hear the Indictment read, and plead afterwards.

Then the Indictment was read; after which *Fitz-Harris* again offer'd his Plea, which the Court directed to be read, but said they did not allow it.

The Indictment is read.

The Plea set forth, That the Prisoner, at a Parliament held at *Oxford* the 21st of *March*, in the

Page 708. *Fitz-Harris* offers a Plea in Paper, that he is impeach'd for the same Treason.

33d Year of the King, was impeach'd for the aforesaid Treason, and therefore pray'd the Judgment of the Court, whether he cou'd be compell'd to answer this Indictment; averring, that the Treason for which he was indicted, was the same Treason for which he was impeach'd; and that the said Impeachment still remain'd in its full Force.

The Court assign him Counsel, and give him Time to mend his Plea.

The Chief Justice acquainted the Prisoner, That they did not use to receive such a Plea without a Council's Hand to it: Whereupon the Prisoner desir'd Council might be assign'd him; and the Court assign'd Sir *Francis Winnington*, Mr. *Williams*, Mr. *Pollexfen*, and Mr. *Wallop*; and told the Prisoner he wou'd do well to consider, lest a Plea of this Nature shou'd be more fatal to him than he expected; and told him, they wou'd give him Time 'till *Tuesday* next, to advise what Plea he wou'd rely upon, and in the mean time Things shou'd stand as they were.

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The Prisoner desir'd his Wife and his Council might have Access to him, which was granted; but the Court told Mrs. *Fitz-Harris*, that she must submit to be search'd when she went to her Husband, and his Keeper must be present when she was with him.

Then the Prisoner desir'd longer Time to prepare his Plea, but was told by the Court, if they wou'd insist upon it, he ought to plead presently; and the Time they had condescended to allow him was an unusual Favour: However, upon the Prisoner's Importunity, the Court did consent, that if the Prisoner deliver'd a Copy of his Plea to Mr. Attorney on *Tuesday*, he shou'd have 'till *Wednesday* to put it in.

A Rule made, that his Counsel and his Wife might come to him.

Mr. Lieutenant of the *Tower* desir'd the Court wou'd make a Rule for the Prisoner's Wife and Council to come to him, for his Discharge, and this was directed to be made Part of the Rule.

He is examin'd concerning the Murder of *Godfrey* Page 710.

Then the Prisoner was carry'd into the little Room belonging to the Court of King's Bench, and examin'd by the Chief Justice, *&c.* about the Murder of Sir *E. Godfrey*; after which he was remanded to the *Tower*.

Monday

Monday the 2d of *May*, the Council aſſign'd the Priſoner, mov'd, that the Rule made for their attending the Priſoner might be mended, it ſeeming doubtful whether they might be with him alone; whereupon the Court declar'd, they intended they ſhou'd be with him alone.

The Priſoner's Council alſo mov'd, that the Time for Pleading might be enlarg'd; and that they might have a Copy of the Indictment: The Court refus'd to give farther Time; and as to a Copy of the Indictment, Mr. Juſtice *Dolben* ſaid, It had been always deny'd in Caſes of Treaſon and Folony: Indeed ſome Heads out of the Indictment had been ſometimes granted, to enable the Party to ſuit his Plea to the Charge, as was done in *Wittipole*'s Caſe, upon a Plea of *Auter fois acquit*.

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Indictment, a Copy of the Heads ſometimes granted.

Mr. *Williams* ſaid, in the Caſe of *King* and *Thomas*, wherein he was Council, *Thomas* was indicted of Murder in one County, and found guilty of Manſlaughter, and was afterwards indicted for the ſame Murder in another County; and, upon alledging as in this Caſe, that it was impoſſible to plead without, they had a Copy of both Indictments; but the Court ſeeming averſe to the granting a Copy, Mr. *Williams* and Mr. *Wallop* deſir'd that other Council might be aſſign'd in their Rooms: The Court anſwer'd, they cou'd not diſcharge them, they being aſſign'd at the Requeſt of the Priſoner: And the Court added Sir *George Treby* and Mr. *Smith* to the Council already aſſign'd, at the Priſoner's Importunity; as alſo a Solicitor to go between the Priſoner and his Council.

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Counſel aſſign'd a Priſoner cannot be diſcharg'd without his Conſent.

Wedneſday the 4th of *May* 1681, *Fitz-Harris* was brought again from the *Tower* to the King's Bench Bar, and producing his Plea, and deſiring it might be receiv'd and allow'd, the Court order'd it to be read, and it was much the ſame with the Plea he tender'd before, and concluded *Unde ipſe præd.* Edwardus Fitz-Harris, *petit judicium ſi* Car. *Dom. Reg. hic ſuper Indictamentum præd. uſus ipſum ulterius procedere vult, &c.*

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Fitz-Harris puts in a Plea to the Juriſdiction of the Court.

Mr. Attorney ſaid, This Plea was no more, in Effect, than what was offer'd before; but that

they had not attended him according to the Rule of Court, but ſent him only a Note Yeſterday, that *Fitz-Harris* intended to ſtand upon his Plea, *That he was impeach'd in the Houſe of Peers*: That he ſent to them to know whether they wou'd plead this to the Juriſdiction, or in Abatement, or in Bar, and they declar'd they wou'd not plead to the Juriſdiction, but now he ſaw it was to the Juriſdiction.

L. C. J. And as a Plea to the Juriſdiction, ſo it concludes.

Mr. *Williams*. The Court directed us to attend Mr. Attorney with the Subſtance, and ſo we did; but as to the Form, we had Liberty to do as we pleas'd.

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Sir *Fr. Winnington*. My Lord, We ſent to the Clerk of the Houſe of Lords, to obtain a Copy of the Impeachment in Parliament; but the Clerk was out of Town, and we cou'd not get it, or elſe we had ſent Mr. Attorney the whole Plea Yeſterday.

Mr. Attorney ſhews the Plea was defective, both as to Matter and Form.

Mr. Attorney. My Lord, This is a Plea to the Juriſdiction of the Court, and whoever will plead ſuch a Plea, muſt have the Record ready to aſſert to the Court that they have not Juriſdiction; and, beſides, they have not pleaded any Record or Impeachment at all; but ſay only, that he was impeach'd by the Commons *de alta Proditione*, which is naught: He ought in his Plea to have ſet forth his Impeachment, and for what Crime particularly: An Indictment or an Impeachment *de alta Proditione*, or *Felony*, or any other Crime is naught; the Law allows not of it; and he muſt not aver upon a Record, but ſet it forth *in hæc verba*, or the Subſtance of it. But in this Caſe, here is nothing of Treaſon ſpecify'd in the Record averr'd, that can intend it to be the ſame Treaſon for which he is indicted.

An Indictment for Treaſon or Felony generally is not good.

L. C. J. Do you think it prudent to argue it at this Time; or will you take a Day to conſider of it?

Then the King's Counſel conſulted together: After which Mr. Attorney went on.

Mr.

Mr. Attorney. We can't see that this amounts to a Plea to the Jurisdiction of this Court; for, upon any Impeachment or Indictment, the King hath Election to proceed upon which he will; and so, if there be ten Indictments, if none of them are come to Judgment, the King may proceed upon which he will; and in *Plunket*'s Case, who was arraign'd, and ready to be try'd in *Ireland*, yet the King has order'd he shall be try'd here: This Court of King's Bench hath a sovereign Jurisdiction of Commoners especially, and can take Cognizance of it; therefore this is not only a false, but a frivolous Plea, and such a one as was never pleaded to your Jurisdiction, and therefore we pray your Judgment upon it.

Mr. Solicitor. It will not be a Question now, how far an Impeachment depending, is a Bar to your Jurisdiction: but whether this be really a Plea to your Jurisdiction, for no Man can plead any Record in another Court, either an Indictment, or Acquittal upon it, without setting forth the Indictment and all the Proceedings of that Court upon that Record: And when such a Plea is put in, we shall either demur to it, or give it the Answer that it requires of *Nultiel Record*; but this does not require any particular Answer, because it sets forth no Record at all that we can answer to.

Mr. Serj. *Maynard*. He cannot plead a Record in general Terms, and give you the Title only, or say he was indicted for such a Thing generally, but he must so set it forth to the Court, that if Issue be taken, the Court may, by comparing the Record with the Plea, judge whether it be the same Matter or no: Indeed a Man need not set forth a general Act of Parliament, but if he will plead a particular Act, he must set forth the Matter of it, to bring his Case under the Judgment of the Court.

Page 715. A Record cannot be pleaded in General Terms.

A Private Act must be pleaded specially.

L. C. J. Do you speak against our receiving the Plea?

Mr. Attorney. Yes, my Lord: We hope you will not admit such a Plea.

L. C. J. Admitting it be an insufficient Plea, shou'd you not demur to it before you demand our Judgment, that we may have somewhat upon the whole before us to judge upon?

Mr. Serj. *Maynard.* Where a Plea is apparently vicious, when it is upon Record, we need not demur to it, or take Issue; for then the Mischief will be, we shall admit all that is well pleaded to be true.

Mr. Serj. *Jefferies.* If there be a Doubt upon a Plea that is read, whereupon a Point of Law may arise, you do usually put the Party to demur, or take Issue; but if the Plea doth appear in its Nature frivolous, you do often refuse to admit such a Plea, and give Judgment upon it: And shou'd we be put to demur to it, we shall, by that, admit, that the Impeachment and Indictment are for one and the same Thing; and we conceive, that is a little dangerous.

Pleas *Ore Tenus* heretofore.

L. C. J. You need not be afraid you shall be concluded by this Demurrer: That there is such an Impeachment in the House of Lords for the same Offence, there is no Colour for it: And formerly, I confess, when they pleaded Pleas *Ore tenus*, and took their Exceptions *Ore tenus* too, they wou'd demand Judgment of a Plea presently; and so it was in the Bishop of *Winchester*'s Case, 3 *Edw.* 3. but now they are grown into a formal Way; all enter'd upon Record, or at least written in Paper: And why shou'd you not go according to the common Course of the Court.

Serj. *Maynard.* It is true, the Course was anciently to plead *Ore tenus*, but pleading in Paper is the same Thing; and the Course of the Court is, when they see it in Paper to be a frivolous Plea, to give Judgment presently; and shou'd there be a Demurrer, it may hang longer than it is convenient this Cause shou'd do.

Mr. Attorney. I have look'd upon all the Precedents, and cannot meet with one Demurrer where the Plea was to the Jurisdiction.

L. C. J. If you insist upon it, and won't demur, or do any Thing, we will give Judgment; but

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we will take Time to consider of it, if you will neither demur, or take Issue, or reply.

Mr. Attorney. He hath not pleaded *prout patet per Record.*

L. C. J. But 'tis *prout patet in Rotulis Parliamenti.*

Mr. Attorney. I did not observe that; but I am ready to satisfy the Court 'tis a pure false and frivolous Plea, and then I offer it to your Consideration, whether you will give any Time, or presently reject it.

L. C. J. We will give them no Time; but the Question is, Whether Time shou'd not be taken, not in Favour of the Prisoner, but of the King and of the Court?

Mr. Attorney. I am ready to make it out, that 'tis all Fiction that is pleaded, and nothing in the Record to warrant it: I have a Copy of the whole Journal, and of the Transactions, in the House of Lords; but when 'tis a frivolous Plea, I hope there will be no Need of that Trouble.

L. C. J. But whether we can take Notice of the Journal-Book, as this Case stands, you had best consider.

Mr. Attorney. My Lord, I'll demur immediately.

Then the Clerk of the Crown drew up a general Demurrer, which being sign'd by Mr. Attorney, was read in Court. Page 717. Mr. Attorney demurs to the Plea.

Mr. Attorney. We pray they may join in Demurrer.

Mr. *Williams.* That your Lordship may be satisfy'd, we design no Delay, we will join in Demurrer.

Then the Clerk drew up the Joinder in Demurrer, which being sign'd by the four Gentlemen of the Prisoner's Counsel, was also read in Court. The Prisoner joins in Demurrer

Mr. Attorney. My Lord, I desire your Judgment, that the Plea may stand over-ruled for a plain fatal Error in it: This is a particular Indictment, for framing a most pernicious and scandalous Libel against the King and Government: And they come and plead, generally, that the Prisoner was impeach'd *de alta Proditione*: And, as I offer'd before, I say now again, that they ought to be ready with the Record to justify their Plea:

And

And this I inſiſt upon, that to out a Court of its Juriſdiction for a particular Treaſon, it is not a good Plea to ſay, he was impeach'd or indicted generally of High Treaſon: Nor can any Averment help it: 'Tis rather to be intended another Treaſon, and not the ſame; and I pray your Judgment upon it.

Mr. *Williams.* We hope the Court will not tye us up to argue this Matter preſently: And I deſire to obſerve, tho' Mr. Attorney is pleas'd to ſay he never knew a Demurrer on a Plea to the Juriſdiction, it was allow'd in *Elliot's* Caſe, tho' the then Attorney oblig'd it; and the Court, in that Caſe, did not oppoſe the Council to argue the Plea preſently, but gave them Time to the next Term; but we aſk not ſo long a Time, tho' here is the Life of a Man and Privilege of Parliament concern'd in it: We aſk no more Time than the Court ſhall think reaſonable for us to be ready in: your Lordſhip did, in the Caſe of *Plunket*, which is as high a Treaſon, give him Time 'till the next Terme.

Page 718. L. C. J. You wou'd have People think you have ſtrange Meaſure in this Caſe: Is your Caſe like *Plunket's*? He is brought from *Ireland*, and indicted for what he did in another Kingdom, and he deſires Time to ſend for his Witneſſes over, which we cou'd not in Juſtice deny. This Caſe is very different from yours; and, I muſt tell you, when we aſſign'd Council to Mr. *Fitz-Harris*, we expected they ſhou'd be ready to maintain the Plea when they came here: What needed we, elſe, to have aſſign'd him ſo much Counſel, and given him ſo much Time to Plead.

Sir *Fr. Winnington.* In the Caſe of my Lord *Hollis*, (being but an Information for a Miſdemeanor) tho' it was a Plea to the Juriſdiction of the Court, and they were at Liberty, and had Reſort to all Papers and Books before the Plea pleaded; (which we cou'd not have) yet the Court gave them Time: And I beſeech your Lordſhip, that in order to do our Duty to the Court and our Client, we may have a little Time.

L. C. J.

L. C. J. If you had pleaded over, as I expected you ſhou'd, we might have given you Time, and not delay'd the King; but having not done that, it is in our Conſideration, whether we will give you Time.

Mr. *Wallop*. I have been an unprofitable Attendant on this Court near 40 Years, and I never ſaw ſo ſwift a Proceeding: We pray we may not proceed, but according to the Rate of Modern Practice: Tho' they call it a frivolous Plea, I believe it is a Plea of the greateſt Import that ever theſe Gentlemen were concern'd in here; and ſince it cou'd not be reaſonably expected we ſhou'd come provided in this Caſe, we humbly pray ſuch a reaſonable Time as your Lordſhip ſhall think fit.

L. C. J. Come, will you plead over?

Mr. *Pollexfen*. We did conſider of that when we were together, and were of Opinion, that wou'd deſtroy our Plea: We cannot plead over, but we give up the Juriſdiction.

L. C. J. Certainly, Mr. *Pollexfen*, *in favorem Vitæ*, it wou'd not hurt the Plea to plead over. Page 719.

Mr. Attorney. As to what has been ſaid of the Modern Practice, I believe the Court was never ſo indulgent before, to give four Days to plead to the Juriſdiction of the Court; and I challenge them again, to ſhew any Inſtance of a Demurrer in a Caſe of this Nature: As to *Elliot*'s Caſe, it was an Information: And to Pleas upon Informations, there have been Demurrers; but to Indictments found by 12 Men, we do not meet with a Demur any where to a Plea to the Juriſdiction: And for thoſe high Matters they talk of, they can never come in Queſtion upon this Plea.

Mr. Attorney ſays, there was no Precedent of a Demurrer in a capital Caſe before.

[At length Time was given them to maintain the Plea 'till the *Saturday* following; but then the Court told them, that if Judgment were againſt the Plea, they muſt plead in chief preſently, and that they muſt not pretend want of Notice, or that their Witneſſes were out of the Way, to put off the Tryal.] Page 720. Time is given the Priſoners Counſel to maintain their Plea.

Sir *Fr. Winnington*. I deſire we may have a Copy of the whole Record. Page 721. A Copy of the Indictment deny'd them.

L. C. J.

L. C. J. Not of the Indictment, but of the Plea and Demurrer you may: The Indictment shall be in Court, and if you have any Occasion to refer to it, we will look upon it.

Then the Prisoner was remanded to the Tower.

Saturday the 7th of *May* 1761, Mr. *Fitz-Harris* was brought again to the King's Bench Bar.

Mr. Attorney. My Lord, I wou'd lay my Finger upon those Points that will be the Questions between us: And first, we say, That the general Allegation, that he was impeach'd *de alta Proditione*, is uncertain, and too general, and is not helped by the Averment. 2dly. Here is no Impeachment alledg'd to be upon Record; for they make a general Allegation, that *Fitz-Harris*, such a Time, was impeach'd, *Impetitus fuit. Quæ quidem Impetitio in pleno robore existit prout per Recordum, &c.* Now there was no Impeachment mention'd before, and therefore it cannot be good: If a Plea shou'd be *Indictatus fuit*, and afterwards it shou'd be said *Quod quidem Indictamentum, &c.* it cannot be good; for the Relative there is only illusive: These are the Exceptions to the Form. And we have this farther Exception to the Matter: That 'tis a Plea to the Jurisdiction of the Court; and the Point will be, whether a Suit depending even in a superior Court, can take away the Jurisdiction of an inferior Court, which had an original Jurisdiction of the Cause of the Person and of the Fact, at the Time of the Fact comitted? What Use might be made of it in the Bar, is another Consideration.

Mr. *Williams's* Argument for the Prisoner.

He recites the Substance of his Plea.

Mr. *Williams*. I am assign'd of Counsel for the Prisoner, and the Case stands thus: He was indicted this Term by one of the Grand-Juries of this County of High Treason: To this Indictment he hath pleaded, That he ought not to be compel'd to answer, because, that before the Indictment was found, at a Parliament held at *Oxford* the 21st of *March* last, he was impeach'd by the Knights, Citizens, and Burgesses of the House of Commons in Parliament assembled, in the Name of themselves, and of all the Commons of *England*, of High Treason, before the Lords in Parliament:

ment: And that this Impeachment was remaining in full Force before the Lords, *prout per Recordum inde inter Recordum Parliamenti remanens plenius liquet & apparet:* And he avers, that the High Treaſon mention'd in the Indictment, and the High Treaſon ſpecify'd in the Impeachment, are one and the ſame: And farther avers, that he is the ſame *Fitz-Harris* nam'd in the Indictment and menti-on'd in the Impeachment, and concluded to the Juriſdiction of the Court, whether upon the whole they will proceed any farther againſt him upon this Indictment, and demands the Judgment of the Court to that Purpoſe.

Upon this Plea Mr. Attorney demurr'd generally; and we have join'd in Demurrer: Now, upon this Demurrer, I take theſe Things to be admitted: Firſt, That the Priſoner ſtands impeach'd by the Commons for High Treaſon. 2dly. That this Impeachment is now in Being. 3dly. That this was done *ſecundum legem & Conſuet. Parliamenti*; and being ſo, remains *in plenis ſuis Robore & effectu.* 4thly. That the Treaſon for which he is impeach'd, and the Treaſon for which he is indicted, is the ſame: And that the *Fitz-Harris* who was impeach'd, is the ſame Perſon who is indicted: That the Impeachment was before the Indictment; and that the Parliament is ſtill in Being: Theſe Points, we conceive, are admitted on the Demurrer. Page 722.

And, by the Way, I ſuppoſe it will not be deny'd but the Commons may impeach a Commoner of High Treaſon before the Lords in Parliament. This was the Caſe of *Treſilian* and *Belknap*, as 'tis reported by my Lord Chief Juſtice *Vaughan* in *Buſhel*'s Caſe.

As to what Mr. Attorney ſays, That an inferior Court having original Juriſdiction of the Perſon and Cauſe, may proceed, notwithſtanding an Indictment in the ſuperior Court: I take the Caſe of an Impeachment to be different from that of an Indictment; and that an Impeachment is rather like an Appeal: As an Appeal is at the Suit of the Party, ſo an Impeachment is at the Suit of the Commons: An Indictment is found upon the Preſentment of a Grand-Jury, who are ſworn *Ad In-*

He compares an Impeachment to an Appeal.

Inquirendum pro Domino Rege pro Corpore Com' ; and the Form is miſtaken, when it is ſaid, *Et pro Corpore Com'*, for it is not for the King *and* the Body of the County, but for the King *for* the Body of the County ; ſo that an Indictment is for the King, an Impeachment for the People: The Commons are Proſecutors on an Impeachment, they manage the Evidence, and Judgment is given at the Prayer of the Commons : There are no Proceedings by the Attorneys ; indeed Attempts have been by Attorneys, to proſecute Perſons in Parliament, but what Succeſs they have had I leave them that are concern'd to conſider.

Page 723. And I take it, It does not become the Juſtice of this Court, to weaken the Methods of Proceedings in Parliament, as this Court will certainly do: If after, there is an Impeachment depending in Parliament, they will admit an Indictment here: This is to ſubject the Proceedings in Parliament to this Court ; and what the Conſequence of that will be, is worthy of Conſideration: And it wou'd be ſtrange, if that ſupream Court ſhou'd be controul'd by an inferior: This does not ſtand with the Wiſdom of the Law, or the Conſtitution of the Government.

Another Thing. It is without Precedent, and conſequently there is no Law for it : This is my Lord *Coke*'s Argument in his Comment on *Littleton*, *Fol.* 108, and in his 4th *Inſt.* 4. 17.

He doubts if the King can pardon one impeach'd. Another Miſchief that will follow upon this, is, That in the Caſe of an Indictment, it is in the Power of the Prince to pardon; but in the Caſe of an Impeachment, I take it to be otherwiſe ; as 'tis in the Caſe of an Appeal : But if this Court can try a Perſon impeach'd, then let Crimes be never ſo heinous and dangerous to the Government, and ſo fit for the Conſideration of Parliament, by poſſeſſing this Court of the Cauſe, you expoſe them to the Will of the Prince ; and ſo theſe Crimes, which are impardonable by Methods of Proceedings in Parliament, wou'd become pardonable.

And, my Lord, ſhou'd you meddle with this, you wou'd put a Man twice in Danger of his Life for one Thing: For, ſuppoſe you proceed upon this

this Indictment, and the Prisoner be acquitted, will that Acquittal bind the Lords in Parliament? And if it will not, you invade that common Right which every *English* Man, by Law, ought to have preserv'd to him, that he shou'd not be twice brought in Danger for the same Thing.

And I take it to be a critical Thing, now at this Time, to make such an Attempt; for by the same Reason that this Court may proceed, his Majesty may appoint a High Steward to try the Lords in the *Tower* by a Jury of Peers; and had this been practis'd in the Case of my Lord *Stafford*, no doubt but he had been now alive: So that this Proceeding will be a very imprudent Thing, if not illegal; and I am sure it will have this Effect: It will stir up a Question between the Jurisdiction of this Court and the Court of Parliament; for if he be found guilty here, the Power of the Commons, in Impeaching, and the Jurisdiction of the Lords, in Tryal and Judgment, are taken away by an inferior Court. Page 724.

As to that Objection of Mr. Attorney's, That this Plea doth not set forth any Record of an Impeachment, or the particular Matter of it, so as the Court may judge of the Reason of it; and he compares it to the Case of a Plea of *Auter foitz acquit*. I answer, That in the Case of *Auter foitz acquit*, there is an Indictment, proceeding of the Court upon the Plea, a fair Tryal and a fair Acquittal, and a Record of all this Matter; and if the Person be indicted again, and do not plead this Record, it is his own Fault: But in this Case, here is no such Record to plead, and that is the Mistake Mr. Attorney has gone upon all along; for in this Case, you must be govern'd by the Rules and Methods of Parliament: Here the Commons carry up this Impeachment to the Lords in general, and have Liberty of presenting Articles in due Time. This is no Record, such as may be had in the Case of *Auter foitz acquit*, for there is only enter'd in the Lords Journal, That such a Day such a Person came from the House of Commons and impeach'd such a one: Here are not the same strict Methods and Forms of Proceeding

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as in the Courts of *Weſtminſter-Hall*; and we
Page 725. have ſaid enough, and as much as can be, in our Caſe: That there was an Impeachment of the Commons before the Lords, which is *in pleno Robore & effectu*; and that it was *ſecundum legem & Conſuetudinem Parliamenti, prout patet inde inter Recorda remanent, &c.* which is as much as if we had ſet forth the Record itſelf; and we take it, 'tis a very full Plea, tho' it be not pleaded particularly; for in Parliamentary Matters, your Lordſhip is to judge according to the Methods of Parliament.

And in the Caſe of my Lord *Shaftsbury*, who was committed for an High Contempt committed in the Houſe of Lords, the Reaſon given by the Judges why they cou'd not bail my Lord was, That as this Court takes Notice of the Courts in *Weſtminſter-Hall*, they ought alſo to take Notice of the Courſe of Parliaments and Houſe of Lords: And if you are bound to do ſo in other Caſes, you are bound to do ſo in this: And I make Uſe of it to this Purpoſe, that we need not ſay *ſecundum legem & Conſuetudinem Parliamenti in hoc*, in this, and that, and t'other Particular; but the Court is to look into it without my pointing to the particular Law of Parliament.

As to that Exception, that the King may chuſe his Court, there is no Doubt but he may do it in his own Action or Suit, but this is an Impeachment of the Commons, and their Suit is to be try'd no where elſe but in Parliament.

There is the Biſhop of *Wincheſter*'s Caſe, 3 *Ed.* 3.
Page 726. 2 *Inſt. Fol.* 15. There the Record ſets forth, That the Biſhop was attach'd to anſwer the King; for that whereas at a Parliament held at *Sarum*, it was ordain'd *per ipſum Regem ne quis ad Dom. Parliament. ſummonitus ab eodem recederet ſine licentia Regis*; *and that the Biſhop, in Contempt* of the King's *Recepit*, without Leave: To this the Biſhop anſwers, *Si quis deliquerit erga Dominum Regem in Parliamento Aliquo, in Parliamento debet Corrigi & emendari & non Alibi in Minore Curia quam in Parliamento, &c.* In this Caſe, they wou'd give no Judgment for the King; but for ought appears, the

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Plea ſtood; and what the Law and Courſe of Parliaments is, my Lord *Coke* there obſerves, the Judges will never intermeddle with.

In the other Caſe of Mr. *Plowden*, and many more, 2 *Phil. & Mar.* the Information ſet forth, That they were ſummon'd to Parliament, and departed without Leave, notwithſtanding the King and Queen's Prohibition to the contrary: Moſt of them, indeed, ſubmitted to a Fine, but Mr. *Plowden* pleaded to it, and ſays, He continu'd in the Parliament from the Beginning to the End; and brings a Traverſe, *Abſque hoc*, that he the ſaid *Edmond Plowden*, the ſaid Day and Year, during the ſaid Parliament, without Licenſe of the ſaid King and Queen, *&c.* did contemptuouſly depart in Contempt of the ſaid King and Queen, and their Commandment and Inhibition, and to the great Detriment of the Commonwealth and State of the Kingdom, *&c.* This, your Lordſhip knows was a very ill Traverſe, and yet this Caſe continu'd all the Time of the Queen; for it appearing upon the Face of the Information, that it was a Caſe which concern'd the Commons, the Court wou'd not give Judgment for or againſt them.

In the Information againſt my Lord *Hollis*, Sir *John Elliot*, and others, for an Aſſault, and Words ſpoken in Parliament, upon a Demurrer, the Court did give Judgment generally, That this Court had Juriſdiction: But we know very well that Judgment was revers'd in the 19th of this King, by Writ of Error; but ſhou'd your Lordſhip give Judgment againſt this Plea, and the Priſoner ſhou'd be obſtinate, and not plead over; and thereupon your Lordſhip ſhou'd give Judgment of Death upon him, and he ſhou'd be executed, tho' a Writ of Error do reverſe the Judgment, it cannot reſtore him his Life.

Page 727.

My Lord, There is an old Caſe 20 *Rich.* 2. a Perſon preſented a Petition to the Commons, in which there were ſome Expreſſions held to be treaſonable; for which he was indicted out of Parliament, and convicted; (and afterwards he was pardon'd) but becauſe the Commons wou'd not reſt

under that Precedent, which they took to be an Invaſion of their Privilege, (tho' he was a Perſon without Doors who prepar'd the Petition, and no Hurt done him but in the Proſecution) that Judgment was voided.

And now, my Lord, we do not only offer theſe Reaſons both as to Matter and Form, but here is the Life of a Perſon, the Right of the Commons to impeach, and the Judicature of the Lords to determine that Impeachment before you; how far you will lay your Hands upon this Caſe, thus circumſtantiated, we muſt ſubmit to you, but I hope you will proceed no farther on the Indictment.

Page 728. Sir *Fr. Winnington*, of Counſel alſo with the Priſoner, repeated many of the Arguments uſed by Mr. *Williams*; and as to the Plea being ſo general that the Court cou'd not judge of it, he anſwer'd, That *Fitz-Harris* had averr'd, by his Plea, that he was impeach'd for the ſame Treaſon for which he was indicted, and this Averment made the Matter as clear to the Court as if the Impeachment had mention'd the particular Treaſon: That Averments, conſiſtent with the Record, were good, and of Neceſſity to clear the Fact to the Court; and where one pleads a Recovery, in a former Action, in Bar to an Action of Debt, *&c.* it is not enough for him to ſet out the Record, but he muſt aver alſo that the Cauſes of Action are the ſame, and that 'tis the ſame Perſon mention'd in one Record as in the other, ſo that the moſt ſpecial and particular Pleas are of no Uſe without Averments: That there is a Caſe, 26. *Aſs. Pl.* 15. mention'd alſo in *Stamf. Pl. Cor.* 105. where a Man was indicted for the Murder of *J. S.* and pleads a Record of Acquittal for the Murder of *J. N.* averring that *J. S.* in this Indictment, is the ſame Perſon with *J. N.* in the other Indictment, and that this was adjudg'd a good Plea, and the Party acquitted, tho' the Averment there ſeem'd contradictory to the Record: Now Mr. Attorney might have pleaded *Nultiel* Record, and then we muſt have produc'd it; but he has demurr'd,

Averments neceſſary in Pleading.

Page 729.

and

and thereby confeſs'd there is ſuch a Record, and confeſs'd the Averment to be true, that he was impeach'd for the ſame Crime, and that he was the ſame Perſon.

That it ſeem'd againſt natural Juſtice, that when the Commons, in the Name of themſelves and of all the Commons of *England*, had lodg'd an Impeachment againſt any Man, that any Commoner ſhou'd afterwards try or judge that Man for that Fact, every Commoner being a Party to the Accuſation, and ſo does not ſtand indifferent; they might be Witneſſes but not Judges.

Perſons not indifferent ought neither to be Judges or Witneſſes.

He obſerv'd, That it was the Courſe of Parliaments to carry up general Impeachments, and afterwards particular Articles, as in the Caſe of my Lord *Clarendon* and the five Popiſh Lords. And it was obſervable, that Indictments were found againſt the Popiſh Lords before there were any Impeachments againſt them, and yet there was never any Attempt to try them upon the Indictments, tho' there had been ſeveral Intervals of Parliaments ſince thoſe Impeachments: That their Caſe, therefore, was ſtronger than that of the Lords; for there the firſt Suit was by the King, but in this Caſe the firſt Suit was by the Commons; and they were told that the Opinions of the Judges had been deliver'd in Council, concerning theſe Lords, that Impeachments being lodg'd in Parliament, no other Proſecution cou'd be againſt them till the Proſecution of the Commons was determin'd.

Page 730.

Whether a Perſon can be indicted after he is impeach'd.

He ſaid, it was the Opinion of the Court, in the Caſe of the Lord *Shaftsbury*, tho' it was agreed by all that the Commitment was too general, being only for a Contempt, whereas the Crime ought particularly to appear in the Warrant; yet it being in a Caſe of Commitment by Parliament, (at leaſt, during the Continuance of Parliament) they ought not to meddle with it, nor cou'd they enquire into the Formality of the Warrant.

As for that Objection, That they had not ſet forth that there was an Impeachment, he did not know how they cou'd have done it better than

by ſaying the Priſoner was impeach'd, and that that Impeachment was in full Force, as appear'd by the Record; and concluded, That as this Plea ſtood, the Demurrer confeſſing the Matter of it, it cou'd not be over ruled without deciding whether the Lords cou'd proceed upon ſuch general Impeachments, and whether the Commons cou'd impeach in ſuch a general Way.

[Page 731.

Mr. *Wallop* alſo, of Counſel for the Priſoner, ſaid, as to the Objection, That becauſe he was impeach'd of High Treaſon, generally, without naming any particular Treaſon, the Treaſon in the Indictment cou'd not be averr'd to be the ſame; and that a Demurrer does never confeſs the Truth of that which by Law cannot be ſaid: He anſwer'd, that he conceiv'd this to be a good Averment, that, indeed, a repugnant or impoſſible Averment cou'd not be taken, as to aver a Horſe was a Sheep, *&c.* but where there was no Impoſſibility or Repugnancy between the Matters, as there was not between that which was generally expreſs'd, and that which was more ſpecially alledg'd, and needed only ſome farther Explanation, there it was not only allowable to aver it, but moſt proper, and in ſuch Caſe only neceſſary; for *quod conſtat clare non debet verificari*: And in this Caſe it was not neceſſary that it ſhou'd appear to the Court, upon View of the Indictment and Impeachment, that the Matter contain'd in both was the ſame; but it was ſufficient if it was proveable upon an Iſſue to be taken: For which he cited *Sparry*'s Caſe, 5 *Co.* 51. that in *Corbet* and *Barnes*'s Caſe, 1 *Cro.* 320. a Battery ſuppos'd to be in *London*, and a Battery ſuppos'd to be in *Herefordſhire*, were averr'd to be one and the ſame Battery, which naturally was impoſſible; but the Action being tranſitory, and therefore ſuppoſable to be done in any County, ſuch an Averment was allowable. That by taking this Averment they had offer'd a fair Iſſue triable by a Jury, but Mr. Attorney having demurr'd, he had confeſs'd what they had alledg'd: If he had taken Iſſue, the Jury might have taken into Conſideration the Libel ſet forth in the Indict-

What Averments ſhall be good, and what not.

Indictment, and the Debates in the House of Commons upon it, which wou'd have prov'd the Issue that the Treason contain'd in the Impeachment was the same with that contain'd in the Indictment: That in an Action, *Quare canem mordacem defendens scienter retinuit* [*scienter*] was not directly issuable, but was proveable upon the general Issue, and so in the present Case, the Intention of the Commons, upon the Issue offer'd by them, might and wou'd have been prov'd.

As to what was objected, that a Man ought not to be put to answer so general an Accusation, he said, neither wou'd *Fitz-Harris* be put to answer without special Articles, but he cou'd not quash the Impeachment, because it was general, as he might an Indictment; therefore they must take the Impeachment as they found it, and since it stood against them as a Record, tho' 'twas general, they must plead it; and as generally, having no Way to make it no Record, as they had in Case of such a general Indictment: And that a general Impeachment, without Articles, was a Bar to any Indictment for the same Matter, had been resolv'd by all the Judges in ths Case of the Lords in the Tower, (as he had been inform'd) tho' the Parliament, wherein they were impeach'd, was dissolv'd. Page 732.

That in an Indictment they cou'd not plead *nuter Foitz* arraign'd, but must plead either *auter Foitz* convict or acquit, *Wishipole*'s Case, 1 *Cro.* 105. But where Articles were once exhibited on an Impeachment, there cou'd be no Proceedings upon an Indictment for the same Offence, tho' the Defendant, in the Impeachment, be neither convict or acquit. To an Indictment one cannot plead *auter Foitz*, arraign'd.

He observ'd how scrupulous the Judges had always been of meddling where they had any Jealousy, that either the Parliament had, or pretended to have a Jurisdiction, *That they wou'd always worship afar off, and wou'd never come near the Mount:* And concluded, that if the Court return'd this Cause, they did in Consequence charge themselves with the Blood of that Man, thro' which they must wade to come at the Cause; and whe-

ther they wou'd come at it upon theſe Terms, he left it to their Conſideration.

Mr. *Pollexfen*, in his Argument for the Priſoner, ſaid, That as to the great Queſtion, Whether the Allegation was not too general; it being alledg'd only that he was impeach'd in Parliament for Treaſon generally, and not ſaid how or for what particular Treaſon, and that the Averment wou'd not help it, He anſwer'd, firſt, that let the Crimes be never ſo particularly ſpecify'd in the Record that is pleaded, yet there muſt be always ſuch an Averment; and that Averment was ſo much the ſubſtantial Part of the Plea, that let the Matter appear never ſo much the ſame, without an Averment it wou'd be naught: As where one pleads one Indictment for the Murder of *J. S.* to another Indictment for the Murder of *J. S.* yet he muſt aver that they are one and the ſame Perſon, for elſe *non conſtat* to the Court, but there may be two *J. S's.* As to the general Allegation, it being admitted that a general Impeachment will take away the Juriſdiction of this Court, he conceiv'd nothing cou'd be plainer than that the Court was outed of its Juriſdiction; and as other Courts were bound to take Notice of the Proceedings in this, ſo this Court was bound to take Notice of the Proceedings in others: That where a Man brings an Action for Wares and Merchandizes, and not expreſſing the Particulars, and afterwards brings another Action ſpecifying the Particulars, ſo much for Cloth, ſo much for Wine, *&c.* tho' the firſt Declaration be in general, not expreſſing what the Wares were, and the laſt is particular, yet may the Defendant plead, in Abatement to the ſecond Declaration, that the firſt and ſecond were for one and the ſame Thing: And if an Indictment for Battery be found againſt a Man generally, yet may a Man that is a ſecond Time indicted, come and ſay this is for one and the ſame Thing: So here, and wherever there is as much Certainty ſet forth as the Caſe will admit, and is poſſible to be had, the Party is permitted to plead as he can, and help himſelf

Page 733.

Where an Averment ſhall reduce a general Allegation to a Certainty.

himſelf by Averment: That here was a general Impeachment, they cou'd not make that particular which was not; they had pleaded it as it was in the Record, from which they cou'd not vary; and they had averr'd that it was the ſame Matter, and it was confeſs'd to be ſo by the Demurrer; and that if the Court wou'd meddle with Proceedings in Parliament, they muſt take Notice of their Method of Proceeding as they did of other Courts: That had they gone about to particularize the Treaſon when the Impeachment was general, the other Side wou'd have ſaid, *Nultiel Record*, and they ſhou'd have been condemn'd for failing in their Record, but having done according to the Fact, if that Fact were ſuch as wou'd ouſt this Court of its Juriſdiction, he did not ſee how it was poſſible they ſhou'd plead otherwiſe, or what Anſwer cou'd be given to it.

That if this Impeachment was in the Nature of an Appeal, it had been agreed that an Appeal did ſuſpend the Proceedings upon an Indictment for that Fact, as was the Caſe in *Dyer* 296, *Stanley* being indicted and convicted for Murder, before Judgment, the Wife brought her Appeal, and the Court wou'd not go to Judgment upon the Indictment till the Appeal was determin'd: And in like manner this Suit ought firſt to have its Courſe and Determination, before the Indictment was proceeded upon. Page 734.

Mr. Attorney. I am of Counſel for the King, and take it, this is a naughty Plea, as a Plea to your Juriſdiction, and that there is no Matter diſclos'd therein that we can take a good Iſſue upon: They ſay, indeed, we have admitted that there is an Impeachment depending, that the Impeachment is for the ſame Matter, and that we have admitted alſo that the Parliament is in Being; but *no Fact is admitted that is not well pleaded*: 'Tis true, were it admitted that the Parliament is ſtill in Being, it wou'd go very hard with us; but if it be not ſo admitted, the whole Force of Mr. *Williams*'s Argument falls to the Ground: And I may affirm, that the Be- Mr. Attorney anſwers the Arguments of the Priſoner's Council.

No Fact is admitted by a Demurrer which is not well pleaded.

The Courts of *Weſtminſter* to take Notice of the Prorogation and Diſſolution of Parliaments.

ginning, Continuance, Prorogation, Adjournments, and Diſſolution of Parliaments, are of publick Cognizance, and the Court will, *ex Officio*, take Notice of them, and they need not be averr'd; and ſo is the 41 *Eliz.* the Biſhop of *Norwich*'s Caſe.

And as for thoſe many Cautions that have been given you, certainly, no Conſideration whatever ought to put Courts of Juſtice out of their ſteady Courſe, but they ought to proceed according to the Law of the Land. Many Things have been offer'd to ſhew that a Plea, depending in a ſuperior Court, is pleadable to the Juriſdiction of an inferior Court. Had they pleaded this in Averment, it wou'd have had its Weight, and been conſider'd as in *Sparry*'s Caſe. But put the Caſe this were a good Impeachment, and he had been arraign'd and acquitted upon it, if he had afterward been indicted in this Court, and wou'd not have pleaded this in Bar, but to the Juriſdiction of the Court, it wou'd not have been a good Plea, but he had loſt his Advantage by Miſpleading: If then an Acquittal, or Conviction, on an Impeachment, is not a

Page 735.

good Plea to the Juriſdiction, ſurely an Impeachment alone, wherein nothing is done, cannot be a good Plea to the Juriſdiction. All the Caſes that have been put about Matters which are not examinable in this Court, make not to the Matter in Queſtion; as, my Lord *Hollis*'s, and Sir *John Elliot*'s, and the Lord *Shaftsbury*'s Caſes, the Fact was done out of their Juriſdiction, and that may be pleaded to the Juriſdiction; but where the Crime and the Perſon are abſolutely within the Juriſdiction of the Court, and the Court may originally take Cognizance of it, as in the preſent Caſe, what can out the Juriſdiction leſs than an Act of Parliament?

As to the Caſe of the five Lords, I obſerve, that the Lords took Care that the Indictments againſt them ſhou'd be all remov'd into the Houſe of Lords, foreſeeing that the King might have proceeded upon thoſe Indictments if they had not been remov'd thither; beſides, the Lords have

have pleaded in Parliament, where, by the Law of Parliament, all the Peers are to be their Judges, nor can they be ousted of that Right: As for the Case of 11 *R.* 2. that had been cited, where there was a Declaration in Parliament, That they proceeded according to the Law of Parliament, and not according to the Common Law, or the Practice of inferior Courts, in the Case of the Lords Appellants; this Proceeding was contrary to *Magna Charta*, to the Statute of *Edward* 3. and the known Priviledges of the Subject: But that Proceeding had Countenance in Parliament, there being an Oath taken by all the Lords in Parliament that they wou'd stand by the Lords Appellants, and thereupon they wou'd not be advis'd by the Judges, but proceed to the Trying of Peers and Commoners at their Pleasure; and between that Time of 11 *R.* 2. and 1 *H.* 4. it may be observ'd what Havock they made by those illegal Proceedings; and in the 1 *H.* 4. it was enacted, That no more Appeals of that Nature, nor any Appeals whatever, shou'd be any more in Parliament; so that the Gentlemen wou'd do well to consider how they liken an Impeachment to an Appeal.

But then, as to the Form, they say that they have pleaded it to be *secundum legem & consuetudinem Parliamenti*, but they ought to have disclos'd what that Law and Custom of Parliament is; indeed, for the legislative Part, and Matters of Priviledge, both Houses proceed only *secundum legem & consuetudinem Parliamenti*, but as to the judicial Part, they have always been guided by the Statutes and Laws of the Land, and have been outed of Jurisdiction in several Cases, as by 4 *Edw.* 3. and 1 *H.* 4. And the Lords, in all Writs of Error and Matters of Judgment, proceed *secundum legem terræ*; for there is not one Law in *Westminster Hall* as to Matters of Judgment, and another in the Court of the Lords above.

The Parliament in their judicial Capacity to proceed according to Law.

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And as to the Allegation being too general, I take the Books to be expres, that when a Record is pleaded in Bar, or in Abatement, the Crimes

Crimes ought to be ſet out to appear the ſame, *Co. Entr.* 53. *Holdcroft*'s and *Burgh*'s Caſe, and *Watts* and *Bray*'s Caſe, 41 and 42 *Eliz. Co. Entr.* 59. *Wrotts* and *Wiggs*'s *Caſe*, 4 *Rep.* 45. and in *Lewes* and *Scholaſtica*'s Caſe, and *Dives* and *Manning*'s Caſe, the Record muſt be ſet out, that the Court might judge upon it; and the Record muſt not be try'd *per Pais*, but by it ſelf. It is true, there muſt be an Averment, let the Matter be pleaded never ſo certainly; but that is for another Reaſon: But whether of the ſame Nature or not of the ſame Nature, muſt appear upon the Record pleaded, becauſe the Court muſt be aſcertain'd that it was ſufficient for the Party to anſwer to it; for if it were inſufficient he may be proceeded againſt: As where an Indictment is pleaded that is inſufficient, tho' the Party pleads an Acquittal or Conviction upon it, it will not avail him, the Court will proceed on the other Indictment, as was reſolv'd in *Vaux*'s Caſe and *Wigg*'s Caſe. This is one great Reaſon why it muſt appear, (*viz.*) That the Court may judge whether it be ſufficient for the Party to anſwer; and now, if this be ſuch an Impeachment, as they have pleaded it, as the Priſoner cou'd not anſwer unto by any Law of Parliament or other Court, then it is not ſufficient to ouſt you of your Juriſdiction.

If one be acquitted on a faulty Indictment he may be indicted again.

It has been ſaid, that in a Caſe of Barretry ſuch an Averment is allowable; to which I anſwer, That is a certain, ſpecial, and particular Crime; but there are abundance of ſpecial Sorts of High Treaſon: As for that Authority cited out of the Book of Aſſizes, where a Man was indicted for the Murder of *J. S.* and afterwards for the Murder of *J. N.* if *J. S.* was known as well by the Name of *J. N.* as *J. S.* the Indictment was for the Murder of the ſame Perſon, and there 'twas pure Fact averr'd: But where 'tis eſſential, as this Caſe is, that the particular Treaſon do appear, to ſay that it is the ſame particular Treaſon, and that Matter of Fact averr'd ſhall enlarge a Record, there is no Authority for.

Matter of Fact averr'd ſhall not enlarge the Record.

As

As to Mr. *Wallop*'s Opinion, That upon this Averment the Jury may try the Fact; Shall a Jury judge upon the Debates of the Houſe of Commons, whether it be the ſame Matter or no? If the Commons have never ſo much in particular againſt a Man, when they come to make good their Impeachment, they muſt aſcertain it to be a particular Crime, and the Overt Act muſt be alledg'd in the Impeachment.

But that which is before your Lordſhip is the Point upon the Pleading, and, I take it, there is nothing before you concerning an Impeachment depending before the Parliament; whatever was done, 'tis ſo imperfectly pleaded that this Court can take no Notice of it. Page 737.

Mr. Solicitor. I ſhall not, at preſent, debate whether *Magna Charta* has order'd that every Man ſhall be try'd by his Peers; and the Statute of the 4 *Edw.* 3. which ſays, that the Lords ſhall not be compell'd, or have Power, to give Judgment upon a Commoner, hath ſecur'd the Subject from Impeachments; or whether an Impeachment depending in the Houſe of Lords againſt a Commoner, by the Commons, will bar this Court of its Juriſdiction; but I ſhall beg Leave to obſerve ſome Things they have offer'd: They ſay, the Houſe of Commons are the Grand Inqueſt of the Nation, and make theſe Preſentments to the Houſe of Lords; but the Queſtion is, Whether this be not a Preſentment for the King, for an Impeachment does not conclude as an Appeal does, but *contra ligeantiæ ſuæ debitum & Coronam & Dignitatem Domini Regis*, ſo that it is the King's Suit; and in an Impeachment the Witneſſes for the Priſoner are not ſworn, nor hath the Priſoner Counſel for his Life in Matter of Fact, as in Caſes of Appeal, at the Suit of the Subject, he hath: The King may pardon Part of the Sentence, it was done ſo in *Richard* the 2d's Time, and it was done ſo lately in the Lord *Stafford*'s Caſe; but were it admitted to be in the Suit of the People, yet that cannot preclude the King from his Suit. At Common Law, before the Statute of the 3d of *Hen.* 7. tho' there was

An Impeachment is the King's Suit and not the Commons.

In an Appeal the Priſoner's Witneſſes are ſworn, and he may have Counſels, but in an Impeachment 'tis otherwiſe.

was an Appeal of Murder, the King might proceed upon the Indictment and ſecure that Statute. An Acquittal or Attainder upon an Indictment is no Bar to an Appeal, ſo that a Man is twice in Danger of his Life in that Caſe as well as this. But this is not like the Caſe of an Appeal, for tho', formerly, it was uſual to ſtay the Suit of the King, and prefer the Suit of the Subject, it was becauſe the Subject had the neareſt Concern, as the Son in the Death of his Father, and it did moſt concern him to proſecute it; but in Caſe of an Impeachment the Treaſon turns quite another Way, for there is no Treaſon but againſt the King, and the King himſelf has the neareſt Concern, the Wrong is primarily and originally to himſelf: The Subjects Danger is but a Conſequence of that, as all Hurt to the King tends to the Hurt of his People: So the King's Suit ought to be preferr'd here as the Subjects was in the other Caſe of an Appeal.

The King may pardon one impeach'd.

A Conviction on an Indictment, no Bar to an Appeal.

And what has been done in the Caſe of the five Lords, ſeems to imply that a Tryal may be here in this Caſe; for if the Lords, after an Impeachment brought againſt the five Lords, and after ſpecial Articles exhibited againſt them, thought fit, notwithſtanding, to remove the Indictment by *Certiorari* into Parliament, to prevent any Proſecution againſt them elſewhere, certainly they thought the King's Court might have proceeded unleſs they had ſo done.

The Indictments again the five Lords remov'd by *Certiorari* into the Houſe of Peers.

Page 738. As to the Form of the Plea, I conceive it is faulty; and tho' it is ſaid, there is a Difference between this Caſe and that of Indictments, becauſe it is the Courſe of the Parliament to impeach generally, this Reaſon holds rather the other Way; for if in any Caſe ſuch a general Way of Pleading, wtih Reference to a Record, were to be admitted, it were in Caſe of an Indictment, becauſe the Indictment, when brought in, wou'd aſcertain the Matter; but here, if the Record be brought in, it will no more aſcertain it than the Plea does already.

Page 739. Mr. Serj. *Jefferies.* As to the Caſe of my Lord *Shaftsbury*, which has been cited, it makes ſtrongly

ly for us there; the Court ſaid they wou'd not meddle with Matters depending in Parliament, becauſe the Parliament was then in Being; but the whole Court did then declare, that had the Parliament been diſſolv'd, they wou'd have ſaid more to it.

The Caſes cited by Mr. *Pollexfen* are right, no doubt, if one bring a general *Indebitatas aſſumpſit* for Wares ſold and deliver'd, and afterwards he brings a particular *Indebitatas aſſumpſit* for ſuch and ſuch Wares, naming the Particulars, the Defendant may plead in Bar, and aver it is for the ſame Thing; but had there been only an Action brought, and no Declaration put in, then the Defendant cou'd not have pleaded ſuch a Plea with ſuch an Averment, becauſe there was not ſufficient Matter of Record ſet forth in the Pleading, whereby the Court might be able to give a Judgment, or put it into a Way of Tryal, whether it is for the ſame or not; and it is the ſame in this Caſe, here being nothing but a bare Accuſation. Nor is this ſo dangerous a Caſe to determine as is pretended by the other Side: Much better wou'd it be for the Court to anſwer, if ever they ſhou'd be requir'd, That they have perform'd their Duty, and done Juſtice according to their Conſciences and their Oaths, than to fear any Threats or Bugbears from the Bar. And how is it poſſible to judge whether the Priſoner is impeach'd for the ſame Thing, it may be for Clipping and Coining for ought appears; nor can the Intention of the Houſe of Commons be prov'd before they come to a Reſolution: The Queſtion is not, whether an Impeachment in the Houſe of Lords ſuperſedes an Indictment in the King's Bench, but, whether they have pleaded it ſo ſubſtantially to enable the Court to judge upon the Queſtion; and therefore we pray your Lordſhips Judgment that the Plea may be over ruled.

An Action brought before a Declaration put in cannot be pleaded in Bar to another Action.

Sir *Fr. Wilkins.* Suppoſe in ſuch a Caſe as this, after ſuch a Plea pleaded, the Commons carry up Articles quite different, then the Plea wou'd appear to be falſe, and the pleading and allowing

ing it an apparent Delay of Juſtice; and the Intention of the Houſe of Commons can never be averr'd or try'd before they have declar'd it themſelves, and I conceive the Plea to be naught for that Reaſon. ——— And farther, Treaſon ge-

Page 740.

nerally alledg'd in the Impeachment is the *Genus*, and the particular Treaſon mention'd in the Indictment is the *Species*; now the Averment in the Plea is that the *Genus* and the *Species* are the ſame, which is abſurd, and, if allow'd, tends only to blind the Court, inſtead of making the Matter plain for their Judgment; for theſe Reaſons, and what has been already urg'd by others, I conceive this Plea ought to be over ruled.

The Court declare they ſhould not meddle to determine whether a Commoner might be impeach'd for Treaſon, or whether an Impeachment ſhou'd ſtay the Proceedings of an inferior Court.

L. C. J. I muſt tell you, you have ſtarted ſeveral Points that are not in the Caſe: As, Whether the Commons can at this Day impeach a Commoner for Treaſon in the Houſe of Lords; Whether an Impeachment in the Lords Houſe (when the Lords are poſſeſs'd fully of the Impeachment) does hinder the Proceeding of an inferior Court; We have nothing to do with theſe Matters; but we have a Caſe here that ariſes upon the Pleadings, and whether you have brought before us a ſufficient Plea to take away the Juriſdiction of the Court, as you have pleaded it, is the ſole Point before us: Now, if you are able to mend your Pleading, we will not catch you; if you let us know it, we will conſider of it; but if you abide by this Plea we ſhall take a reaſonable Time to give our Judgment: As for the Caſes cited concerning Facts done in Parliament, we do not aſſume a Juriſdiction to enquire into theſe Matters; for Words ſpoken or Faults done in the Commons Houſe, or in the Lords, we call none in Queſtion here which takes off moſt of the Inſtances you have given: Our Queſtion is barely upon the Pleading, whether we have a ſufficient Pleading of ſuch an Impeachment as can foreclooſe the Hands of the Court; and as to that we ſhall deliberate well before we give our Judgment.

Then

Then *Fitz-Harris* was remanded to the Tower.

Tueſday, *May* the 10th, Mr. *Attorney* mov'd the Court to appoint a Day to give Judgment upon the Plea, and *Fitz-Harris* was order'd to be brought up the next Morning.

Wedneſday, *May* the 11th, Mr. *Fitz-Harris* being brought to the Bar, Mr. Attorney pray'd Judgment on the Plea.

Then the Chief Juſtice acquainted Mr. *Fitz-Harris* that upon full Conſideration and Deliberation of this Caſe, and upon Conference with ſome of the other Judges, Mr. J. *Jones*, Mr. J. *Raymond*, and himſelf, were of Opinion that his Plea was inſufficient, but that Mr. J. *Dolben* doubted concerning it, and therefore the Court did order and award that he ſhou'd anſwer over to the Treaſon.

The Chief Juſtice, Mr. J. *Jones*, and Mr. *Raymond*, of Opinion the Plea was inſufficient. Mr. J. *Dolben* doubted.

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The Court award the Priſoner ſhall plead over.

The Clerk of the Crown being about to arraign the Priſoner, he deſir'd he might adviſe with his Counſel before he pleaded, but was told he cou'd have no Counſel as to Matter of Fact: Then he deſir'd he might finiſh his Confeſſion before he pleaded before the Chief Juſtice and ſome of the Counſel; but my Lord Chief Juſtice ſaid, he had trifled with them ſo often that he had nothing to ſay to that Matter at preſent, and directed him to plead. Whereupon, being arraign'd by the Clerk of the Crown, he pleaded, *Not Guilty*, and put himſelf upon his Country. After which, Mr. *Fitz-Harris* deſir'd he might have Time to ſend for a Witneſs from *Holland* before he was brought upon his Tryal, and it being demanded what he wou'd bring that Witneſs to prove, he ſaid, he did not know whether it wou'd be ſafe for him to diſcover that, but he wou'd acquaint the Chief Juſtice with it in private.

The Priſoner pleads, *Not Guilty*.

The King's Council inſiſted that he might be try'd this Term, and urg'd that the Priſoner had had a whole Term's Notice to prepare for his Tryal and provide his Witneſſes; but the Chief Juſtice thought fit to allow him Time till the next Term: For he ſaid, having been made to depend upon his Plea, it might be a Surprize to

He has Time to prepare for his Tryal till next Term.

to him if he was try'd ſuddenly; and the Court were all of Opinion he ſhou'd have that Time
Page 742. to produce his Witneſſes: And a Rule was made that his Wife and his Solicitor might come to him with his Papers, provided they were firſt inſpected by the Lieutenant of the Tower; and *Subpœna's* for his Witneſſes were order'd.

In capital Cauſes a Jury ſhall not be ſtruck as in Civil Cauſes, but it muſt be left to the Sheriff.

Mr. Attorney mov'd, that the Sheriff might attend the Clerk of the Crown, with the Freeholder's Book, to ſtrike a Jury, for that he was afraid there might be ſome Practice in this Cauſe, and ſaid, that this was uſual in Tryals at Bar: The Court anſwer'd, that might be done in Civil Cauſes, but they doubted it cou'd not in Criminal, and that the Courſe of the Court ſhou'd be obſerv'd.

Then the Priſoner was carry'd back to the Tower.

Fitz-Harris brought upon his Tryal.

On *Thurſday* the 9th of *June*, 33 *Car.* 2. 1681, being the firſt *Thurſday* in Trinity Term, Mr. *Edward Fitz-Harris* was brought to the Court of the King's Bench, and Mr. *Thompſon* mov'd, that before his Tryal he might give Evidence againſt Sir *John Arundel* and Sir *Richard Beiling*, concerning the Murder of Sir *E. Godfrey*, in open Court,
Page 743. for that there was an Attempt to prove Sir *E. Godfrey* murder'd himſelf.

The Court refuſes to examine the Priſoner, before his Tryal, as to the Murder of *Godfrey*.

The Chief Juſtice anſwer'd, That what he mov'd two or three Days before had ſome Reaſon in it, (*viz.*) That he might give Evidence to a Grand Jury, but there being no Grand Jury ſworn, there was no Body to give Evidence to, unleſs he wou'd have the Court take his Examination, and afterwards give it in Evidence to the Grand Jury: Whereupon the Jury was order'd to be ſworn.

A Priſoner not be allow'd to receive Papers or Inſtructions from his Council at his Tryal, or to have a Solicitor.

The Priſoner deſir'd his Wife and his Solicitor might ſtand by him with his Papers; and it was granted that his Wife ſhou'd ſtand by him with ſuch Papers as he had prepar'd for the Help of his Memory; but if ſhe brought Papers drawn up by Counſel for him, it was not to be allowed: And as to a Solicitor, he was told, none were ever granted to a Priſoner to aſſiſt him at his Tryal in Caſes of High Treaſon.

The

The King's Council obſerv'd, That the Priſoner's Wife had brought him a Copy of the Pannel, with Directions who he ſhou'd challenge; and ſaid, they found three Anabaptiſt Preachers, and ſeveral Fanaticks, return'd upon the Jury; and inſiſted, that the Priſoner's Wife might be remov'd farther from him; but upon the Priſoner's returning the Papers back to her again, ſhe was permitted to remain where ſhe was. Page 744.

Then the Jurors were call'd: And firſt, Sir *Michael Heneage*, who deſir'd to be excus'd becauſe he was ill; but the Court told him, they cou'd not excuſe him, if there were not enough without; and he was order'd to ſtand by. Major *Wildman* being call'd, ſaid, he had voted the Impeachment againſt *Fitz-Harris*, and therefore he thought he ought not to ſerve on this Jury; but it appearing he had no Freehold in *Middleſex*, the Major was excus'd upon that Account.

Maximilian Beard being call'd, ſaid, he was 75 Years of Age, and deſir'd he might be excus'd; but 'twas ſaid, ſince he was impanell'd, and had appear'd, he muſt ſerve, if there were not enough; but if he had not appear'd, he might have a Writ of Privilege for his Diſcharge in regard of his Age; and he ought to be put out of the Freeholders Book.

If one ſuperannuated appears on a Jury, he muſt ſerve, but he might have had a Writ of Priviledge to diſcharge him.

Two of the Jurors being challeng'd for the King, and Mr. *Fitz-Harris* inſiſting that the King's Counſel ſhou'd ſhew Cauſe, the Chief Juſtice held, that the King need not ſhew Cauſe 'till the Pannel was gone through. *At length the following Gentlemen were ſworn.*

Thomas Johnſon,
Lucy Knightly,
Edward Wilford,
Alexander Hiſey,
Martin James,
John Viner,
William Withers,
William Cleare,
Thomas Goffe,
Ralph Farr,
Samuel Freebody,
John Lockier.

The Jury being ſworn, were charg'd with the Priſoner, and Pen, Ink, and Paper were allow'd the Priſoner on his Requeſt.

The Indictment for a treaſonable Libel, call'd, *The True* Engliſh-man *ſpeaking plain* Engliſh.

The Indictment ſets forth, that *Edward Fitz-Harris*, [the Priſoner] the 21ſt of *February*, in the 33d Year of the King, at the Pariſh of St. *Martin's* in the *Fields* in the County of *Middleſex*, did compaſs and imagine to depoſe the King and bring him to Death, and to raiſe War and Rebellion within this Kingdom: And that for the Accompliſhment of his ſaid traiterous Purpoſes, he did, at the Time and Place aforeſaid, meet and aſſemble with one *Edmond Everard*, and ſeveral others, and diſcover his ſaid traiterous Purpoſes, and did incite and perſwade the ſaid *Edmond Everard* to aid and aſſiſt him therein, and offer'd him great Rewards ſo to do: And the Indictment farther ſets forth, that the ſaid *Edward Fitz-Harris*, the better to effect his ſaid treaſonable Imaginations and Purpoſes, and to incite the King's Subjects to riſe as one Man, in open Rebellion againſt him, and depoſe him, did frame, and make a treaſonable Libel, entitled, *The True* Engliſh *Man ſpeaking plain* Engliſh. In which, among others, are the following Words: *If* James (*Innuendo* the Duke of *York*, *&c.*) *be conſcious and guilty*, Ch. (*Innuendo* the King, *&c. is ſo too: Believe me, both theſe are Brethren in Iniquity; they are in Confederacy with the Pope and* French, *to introduce Popery and Arbitrary Government, as their Actions demonſtrate. The Parliament's* Magna Charta, *and the Liberty of the Subjects are heavy Yokes they'd willingly caſt off, to make themſelves as abſolute as their Brother of* France. *And, if this can be prov'd to be their Aim and main Endeavour, why ſhou'd not every true* Briton *be a Quaker thus far, and let the* Engliſh *Spirit be up, and move us all, as one Man, to Self-Defence; nay, and if need be, to open Action, and fling off theſe intolerable Riders. And in another Place, are theſe Words's*]. *and* C. (meaning the Duke and King) *both Brethren in Iniquity, corrupt both in Root and Branch, as you have ſeen they ſtudy but to enſlave you to a* Romiſh *and* Frenchlike *Yoke: Is it not plain? Have you not Eyes, Senſe, or Feeling? Where is that old* Engliſh *noble Spirit? Are*

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you

you become French *Asses, to suffer any Load to be laid upon you? And if you can get no Remedy from this next Parliament, as certainly you will not, and that the K. repents not, complies not with their Advice, then up all as one Man. O! Brave* English-*Men, look to your own Defence e'er it be too late! Rouse up your Spirits!* And in another Place he says, *I will only add, that as it is the undoubted Right of Parliaments to make a Law against a Popish Successor, who wou'd prove destructive to our Laws and Liberties, so it is their undoubted Right to dethrone any Possessor that follows evil Counsellors to the Destruction of our Government:* (In another Place) *Then let all be ready! Then let the City of* London *stand by the Parliament, with Offers of any Money for maintaining their Liberties and Religion in any extream Way, if Parliamentary Courses be not comply'd with by the King.* All which is said to be against the Duty of his Allegiance, the King's Peace, his Crown and Dignity, *&c.* Page 747.

M. Heath open'd the Indictment, and Mr. Attorney open'd the Nature and Course of the Evidence; after which the King's Witnesses were call'd: And first,

Mr. *Everard* was sworn.

Everard's Evidence of *Fitz-Harris's* coming to his Chamber in *Gray's-Inn*, and giving him Instructions to write the Libel.

He depos'd, That he came acquainted with the Prisoner, *Fitz-Harris*, in the *French* Service Abroad; that renewing their Acquaintance here in *England* about *February* last, and discoursing of the Sufferings and Disadvantages the Deponent lay under, by adhering to the Protestant Interest, the Prisoner told him, if he wou'd reingratiate himself in the *French* and Popish Interest, there was an Opportunity in his Hands, wherein the Deponent might be serviceable to himself and others; and the Prisoner said, there were several Parliament Men, and others, that did adhere to the *French* Interest, and gave the *French* Ambassador an Account of every Day's Proceedings: That as the Deponent was suppos'd to be the Author of a Pamphlet call'd, *An Answer to the King's Declaration, concerning the Duke of* Monmouth. He shou'd write such another, reflecting on the King, in order to alienate the King from his People and his People from him: And that on *Monday* the 21st of

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February, the Priſoner came to the Deponent, and gave him ſome Heads and Inſtructions towards forming the Pamphlet: That as ſoon as the Priſoner was gone, the Deponent met Mr. *Savile*, and told him what had been propos'd to him; and they went into the City, and acquainted one Mr. *Crew* with it, and deſir'd he wou'd be at their next Meeting, where he might be conceal'd, and overhear what paſs'd; but Mr. *Crew* underſtanding the Priſoner often ſpoke in *French*, thought himſelf not Maſter enough of the *French* Tongue to underſtand the Converſation, declin'd it; and Mr. *Savile* and the Deponent went and propos'd the ſame Thing to Mr. *Smith* and Sir *William Waller*, who both promis'd to come to the Deponent's Chamber at *Grey*'s *Inn*, at Two a-Clock the next Day; and accordingly Mr. *Smith* came, (but Sir *William* did not, to the firſt Meeting) and the Deponent plac'd him in a Cloſet, where he might hear and ſee all that paſs'd, thro' the Hangings: That when Mr. *Fitz-Harris* came to the Deponent's Chamber, he aſk'd the Deponent what he had done in the Matter, and the Deponent ſhew'd him ſomething he had drawn up, which *Fitz-Harris* approv'd; but he ſaid, he muſt add ſomething more, and proceeded to give the Deponent farther Inſtructions; and he enter'd them in his Table-Book. Then *Fitz-Harris* aſk'd when the Scheme wou'd be ready, and the Deponent directed him to come again the next Day; and the Deponent ſent to Sir *William Waller* not to fail to be there, and Sir *William* came, and was conceal'd in a Place where he might ſee and hear all that paſs'd undiſcover'd; but before this, the Deponent ſhew'd Sir *William* two Copies of Inſtructions both the ſame, which he deſir'd Sir *William* to countermark, that he might know them again, which he did: A little after Sir *William* was plac'd, *Fitz-Harris* came in, and the Deponent gave him one of the Copies of the Pamphlet, which he read, and the Deponent read the other; and *Fitz-Harris* added ſome Things, and ſtruck out others; and told the Deponent, it muſt be copy'd over fair, becauſe it was not fit for the *French* Ambaſſador's Confeſſor to read, who was to

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preſent

preſent it to the Ambaſſador: That the Deponent ſaid, it ſhou'd be done; but added, theſe were very treaſonable Things; and *Fitz-Harris* anſwer'd, 'The more treaſonable the better; it wou'd ſet the 'People together by the Ears, and keep them 'claſhing and miſtruſting one another, while the '*French* King ſhou'd gain *Flanders*, and then he 'wou'd make no Bones of getting *England* too: 'That he bid the Deponent not be diſcourag'd at 'the Danger, for when this was done he ſhou'd 'have forty Guineas, and a Penſion afterwards of 'ſome thouſand Crowns; for his Maſter, the '*French* King, was not ſuch a Niggard as the *Spa-*'*niard*;" and that after ſome farther Inſtructions Mr. *Fitz-Harris* left him.

Fitz-Harris. Were you not put upon this, to trapan other People?

Everard. I was put upon it by no body but *Fitz-Harris*, to whom I was to deliver it, and he was to give it to the *French* Ambaſſador's Confeſſor, and it was to be drawn up in the Name of the Non-conformiſts, and put upon them. Page 750.

Fitz-Harris. Is this the ſame Libel that was read in the Houſe of Commons, upon which I was impeach'd?

Everard. Yes, I believe it was.

Mr. *Jones.* Did any Body elſe aſſiſt you in drawing the Libel?

Everard. There is at the latter End a Paragraph taken out of a ſcandalous Libel handed about, and ſomething more out of another, entitled, *The Character of a Popiſh Succeſſor*, in which *Fitz-Harris* ſaid, there were many Things material; and I copy'd ſome of the Queries in the Paper call'd, *A Letter intercepted to* Roger L'Eſtrange.

Mr. *Johnſon.* Did *Fitz-Harris* name the Parliament-Men who concurr'd with the *French* Ambaſſador in this Deſign?

Everard. No, he ſaid I ſhou'd know them hereafter.

Mr. *Smith* was ſworn. *Smith's* Evidence of his being conceal'd in Mr. *Everard's* Chamber, and over-hearing the Inſtructions the Priſoner gave Mr. *Everard*.

He depos'd, that on the 21ſt or 22d of *February*, Mr. *Everard* and Mr. *Savile* came to him, and told him of the Deſign of this *Iriſh* Officer, (*Fitz-*

Harris) to publiſh a treaſonable Libel; and that the Deponent agreed with them to go to Mr. *Everard*'s, and lie conceal'd, as is before depos'd; and that they met with Sir *William Waller*, and he alſo engag'd to come to Mr. *Everard*'s Chamber: That the next Night Sir *William Waller* not coming, the Deponent went into Mr. *Everard*'s Cloſet himſelf, and ſoon after *Fitz-Harris* came; and, after ſome little Diſcourſe of the Matter between *Everard* and *Fitz-Harris*, Mr. *Everard* fetch'd a Piece of Paper of about half a Sheet, and read it to *Fitz-Harris*; and *Fitz-Harris* ſaid, there muſt ſomething be added to it, and mention'd ſeveral Heads: He told him, he ſhou'd repreſent the King as a Papiſt; and that it might be demonſtrated by ſeveral Inſtances: As firſt, His eſpouſing the Duke of *York*'s Intereſt, and preferring his Creatures by Sea and Land, ſome of whom were known Papiſts: That it might be deduc'd alſo from that Act which the King procur'd, That it ſhou'd be Treaſon to call him Papiſt, which he did, that he might the more eaſily introduce Popery: He directed Mr. *Everard* alſo, to charge King *Charles* the Firſt with promoting the *Iriſh* Rebellion, and *Charles* the Second with furthering of it: That the *Oxford* Parliament was but a Sham, and ſuch a King was not to be truſted with the Lives, Liberties, or Religion of a People, but the People ought to provide for themſelves, and blow the Trumpet boldly; and as it was the People's Right to make Laws, and oppoſe a Popiſh Succeſſor, ſo they might alſo depoſe a Popiſh Poſſeſſor: And he told Mr. *Everard* he ſhou'd get an Intereſt in the Common-Council, and procure them to addreſs the Parliament, and promiſe to ſtand by them, with their Lives and Fortunes, againſt Popery and Arbitrary Power; and that if Parliamentary Ways fail'd they wou'd aſſiſt them another Way; and if the King hinder'd the Duke of *York*'s coming to a Tryal, they wou'd take other Courſes, *&c.* That Mr. *Everard* ſaid, He wou'd do as he directed, but he was in great Danger; and *Fitz-Harris* anſwer'd, So am I, and a great many more; and mention'd ſomething of a Re-

Page 751.

ward,

ward, but the Deponent did not remember what; that on Mr. *Everard*'s saying they were treasonable Things, Mr. *Fitz-Harris* answer'd, The more Treason the better; and the Substance of the whole was, That the King and People shou'd be set at Variance, that the *French* King might fall upon *Flanders* and *Holland*, and afterwards 'twas said, he wou'd make no Bones of *England*.

Sir *William Waller* was sworn. Page 752.

Sir *W. Waller*'s Evidence of his being conceal'd in *Everard*'s Chamber, and overhearing the Instructions the Prisoner gave *Everard* to frame the Libel.

He depos'd, That on the 22d or 23d of *February* last Mr. *Everard* came to him and told him that Mr. *Fitz-Harris* had been several Times with him to engage him in a Business that, in all likelihood, wou'd put *England* in Confusion, and render the King very odious to his Subjects; and that he press'd the Deponent to assist him in making a full Discovery of it: That the Deponent did not go to the first Meeting at Mr. *Everard*'s Chamber, being willing to hear how the Business went on, and if it was likely to come to any Thing before he engag'd in it: But Mr. *Everard* sending him a Letter of what had happen'd at the first Meeting, and pressing him, as he tender'd the Welfare of the Government, that he wou'd be at his Chamber the next Day, the Deponent came, and Mr. *Everard* shew'd him two Papers on which he made a private Mark, and being plac'd where he cou'd observe what pass'd, Mr. *Fitz-Harris* came in.

[Here the King's Counsel complain'd that Mr. *Whittacre*, who was assign'd Solicitor to Mr. *Harris*, furnish'd him with Papers towards his Defence, which they said was more than a Solicitor ought to do; but it appearing to be only the Resolution of the House of Commons, Sir *William* proceeded in his Evidence.]

He depos'd, That Mr. *Fitz-Harris* first ask'd if Mr. *Everard* had finish'd the Paper according to some Instructions he had given him, and Mr. *Everard* produc'd two Papers, the one a Counter-Part of the other, and Mr. *Everard* read one Page 753. and gave the other to Mr. *Fitz-Harris* to look upon, and he ask'd Mr. *Fitz-Harris* whether it was agreeable to his Instructions, and *Fitz-Harris* answer'd,

anſwer'd, yes; and Mr. *Everard* ſaying the Thing was of dangerous Conſequence, and demanding what Reward he was to have for running ſo great a Hazard, Mr. *Harris* reply'd, he ran an equal Hazard; and *Fitz-Harris* made ſeveral Alterations in the Papers, and, as ſoon as he was gone, the Deponent came out of the Place where he had been conceal'd, and obſerv'd the Ink was hardly dry on the Papers that were alter'd. [here the Papers which Sir *William* had mark'd were ſhewn him, and he atteſted that they were the ſame.] Sir *William* added, that *Fitz-Harris* told Mr. *Everard* he ſhou'd be preferr'd, and be paid a Penſion of 3000 *l.* by the *French* Ambaſſador; and that they had employ'd a great many more in Buſineſſes of this Nature, to create Miſunderſtandings between the King and his People, by which Means the *French* King wou'd have an Opportunity of over-running *Flanders*, *&c.* and then *England* wou'd become an eaſy Morſel.

Fitz-Harris. Do you believe I had any treaſonable Deſign in this?

Sir *W Waller.* I can ſay nothing to that, I only ſpeak to Matter of Fact.

Fitz-Harris. Is this the ſame Paper for which I was impeach'd by the Parliament?

Sir *W. Waller.* Yes, 'tis a Copy of it, I read it in the Houſe, and as ſoon as I had made my Report in the Houſe of theſe treaſonable Tranſactions, they immediately proceeded to the Impeachment.

Mr. Solicitor. That this Libel was ſpoken of in the Houſe of Commons is true, but it does not appear upon the Impeachment that he was impeach'd upon that Libel.

Mr. *Fitz-Harris.* Had not Sir *William Waller* a Deſign to trepan me in this Matter; for I alway look'd upon him as my Enemy?

Sir *W. Waller.* No, Mr. *Fitz-Harris*, indeed, not I.

Serj. *Jefferies.* Have you known Mr. *Fitz-Harris* before; what Religion is he of?

Sir *W.*

Sir *W. Waller.* I have known him many Years, he was always reputed a Roman Catholick. Page 754.

[Here the whole Libel was read to the Jury, and they compar'd the Words in the Indictment with thoſe in the Libel, and examin'd, if they bore the ſame Senſe in the Indictment as they did in the Libel, as they were connected there with other Words.]

L. C. J. Gentlemen, you have heard it read, and may obſerve, there is nothing in the Libel that can extenuate or mitigate the Clauſes laid in the Indictment, but abundance to make them more horrid and exceedingly aggravated.

Then Sir *Phil. Lloyd* and Mr. *Bridgman* were ſworn, and depos'd, That Part of the Inſtructions which Mr. *Fitz-Harris* gave to Mr. *Everard* in Writing *Fitz-Harris* acknowledg'd to be his Hand-Writing.

Clerk reads the Inſtructions: *After this Sham* Page 755. *Meeting of the Parliament, &c.*

L. C. J. When were theſe Inſtructions given you, Mr. *Everard?*

Everard. In *February*, either on the *Monday* or *Tueſday.*

L. C. J. If you have any thing to ſay in your Defence, Mr. *Fitz-Harris*, this is your Time.

Fitz-Harris's Defence.

Fitz-Harris. I deſire Mr. *Otes* may be call'd.

Mr. *Otes* appear'd.

Fitz-Harris. Pray, Doctor, what have you heard Mr. *Everard* ſay about this Libel ſince I was taken.

Otes depoſes.

Otes. Having heard of the Diſcovery Mr. *Everard* and Sir *William* had made, I did diſcourſe with Mr. *Everard* about it, and he told me he wrote the Libel, and when I ſeem d to diſbelieve it the Man was angry with me; I told him he ſpoke but badly, and *Everard* reply'd, tho' he was unfortunate in his Tongue, he was fortunate in his Pen, and that he took a great deal out of the intercepted Letter to Sir *Roger L'Eſtrange*; and aſking what the Deſign of the Book was, he ſaid, it was to be ſent by the Penny-Poſt to the proteſting Lords and the leading Men in the Houſe of Commons, that they might

That the Libel was to be convey'd into Whigg's Pockets, and that the King had a Hand in it.

might be taken up, and ſearch'd, and have it found upon them: He told me alſo, that the Court had a Hand in it, and the King had given *Fitz-Harris* Money already, and wou'd give him more if he had Succeſs.

Mr. Sheriff *Corniſh* appear'd.

Fitz-Harris. Pray, Mr. Sheriff, declare what the King ſaid to you when you went from me in *Newgate*, and acquainted his Majeſty I wou'd make a Diſcovery.

Corniſh. I deſire your Lordſhip's Opinion, whether it be decent for a Subject to declare what Diſcourſe his Prince is pleas'd to have with him.

L. C. J. If you have any Evidence give it: We are not to direct you, Sir.

Corniſh. My Lord, when I acquainted his Majeſty that the Priſoner was enclin'd to make a Diſcovery, his Majeſty ſaid, he had often had him before him and his Secretaries and cou'd diſcover nothing from him; and his Majeſty added, That about three Months before the Priſoner pretended he was in Purſuit of a Plot relating to his Majeſty and the Government, and that the Priſoner having made great Proteſtations of Zeal for his Service, he did countenance him and give him Money.

Mr. Attorney. Did the King ſay he ſaw him before he was arreſted for this Fact?

Corniſh. Yes, his Majeſty ſaid the Priſoner came to him about three Months before, and pretended he wou'd diſcover a great Plot.

Col. *Manſel* was call'd.

Fitz-Harris. What did you hear Sir *William Waller* ſay after this Diſcovery?

Col. *Manſel's* Evidence that the King ſaid, this Diſcovery had broke all his Meaſures.

Col. *Manſel.* I was at the *Dog Tavern* with Sir *William Waller* and ſome other Company, and Sir *William* was giving an Account of this Buſineſs: And Sir *William* ſaid, when he acquainted the King with the Diſcovery, his Majeſty told him he had done him the greateſt Piece of Service that ever he had done him in his Life, and gave Sir *William* a great many Thanks: But that ſoon after he left the King, two worthy

Gentlemen

Gentlemen told him, [Sir *William*] that the King said, he had broken all his Measures, and he wou'd have him [Sir *William*] taken off one Way or another. Page 756.

Fitz-Harris. Did he say it was design'd to put the Libel upon the Protestant Lords and the House of Commons?

Col. *Mansel.* There was that said.

L. C. J. What was said? Don't come with your imperfect Discourses here.

Col. *Mansel.* Sir *William Waller* said, that the Design was against the Protestant Party.

Mr. Attorney. So say we.

Mr. *Hunt* appear'd.

He Depos'd, That he was then at the *Dog Tavern* too, and Sir *William Waller*, after he had read the Libel to the Company, did tell them that the King gave him particular Thanks for his Service in detecting *Fitz-Harris*; but that two Gentlemen of undoubted Credit told him afterwards, that the King was in a great Passion, and bestow'd hard Names upon him, and said, he wou'd give any Thing to take him out of the World; that he [Sir *William*] was an unsufferable Vexation to him, and had broken all his Measures; and that Sir *William* said the same in the Presence of *Ph. Harcourt* and others, at *Oxford*. And Sir *William* said, it was contriv'd to put these Papers into the Hands of People, to make them Evidences of Rebellion, and said, there was another Plot which he had trac'd near to a full Discovery, a more horrid Plot than this or *Dangerfield*'s.

Mr. Sheriff *Bethel* appear'd.

He depos'd, That Mr. *Everard* told him he wrote the Libel himself, and said, that *Everard* preferr'd a groundless Information against him for Treason, at the Instigation of an Enemy of the Deponent's.

Mrs. *Wall* was call'd.

The Prisoner calls Witnesses to shew he had Money of the King for secret Service.

Fitz-Harris. Pray acquaint the Court if I have not convey'd treasonable Papers to the King, by your Means, and if I had not 250*l.* upon that Account, about *Christmas* last was Twelve-Month, when

when I gave you the Libel about the King and your Lady.

Mrs. *Wall.* There was 150*l.* 200*l.* or 250*l.* paid him, but not for a Libel; he was a Kinſman of mine, and I took him for an honeſt Man, and was willing to do him what Kindneſs I cou'd, and his Family having ſuffer'd much for the King; and Mr. *Fitz-Harris* telling me he cou'd bring over ſome conſiderable People to the King's Intereſt, I ſpoke to the Secretaries of State and to the Dutcheſs of *Portſmouth* for him, and in about ſix Months Time I did get him the Money he mentions.

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[Here Mrs. *Wall* produc'd a Petition of Mrs. *Fitz-Harris*'s for a Quit-Rent that belong'd to her in *Ireland.*]

Fitz-Harris. When were theſe Papers given you; did I give 'em you?

Mrs. *Wall.* You or your Wife did.

Fitz-Harris. Did not I come to you the *Wedneſday* before I was taken, and told you I deſir'd to ſpeak with the King, and that I had a Libel to preſent him?

Mrs. *Wall.* You came the *Thurſday* before you was taken, about Nine at Night, and ſaid, if you might ſee the King you believ'd you cou'd do him Service, but mention'd no Libel as I have a Soul to be ſav'd.

Fitz-Harris. Did not you ſay my Lord *Sunderland* was gone, and you cou'd not ſo eaſily do Buſineſs with the King now he was gone.

Mr. Attorney. Was not he a Roman Catholick?

Mrs. *Wall.* Yes, and upon that account we ſaid it was dangerous to let him go near the King.

Mr. Attorney. Do you know he was ever admitted to the King?

Mrs. *Wall.* Never; he has, indeed, been with me in a Room when the King paſs'd by, but the King never took any Notice of him, or ſpoke with him by any Means; nor did the King or the Dutcheſs of *Portſmouth* give him any other Money than I have mention'd.

L. C. J.

L.C.J. Upon what Account was that Money paid?

Mr. *Wall.* My Lord, ſince you preſs me, it was for bringing in the Lord *Howard* of *Eſcrick*, it was that and his Poverty together. Page 758.

Mr. Serj. *Jefferies.* What Character did he give *Everard* when he diſcours'd of him?

Mrs. *Wall.* He ſaid he was an honeſt Man, and aſk'd if I wou'd be acquainted with him, I told him, No: He was an Informer and had a knaviſh Reputation.

Fitz-Harris. Did not I ſpeak to the King in the outer Room, and did not you get me to make a Stand there?

Mrs. *Wall.* Don't make me tell that Thing, you did deſire me to tell the Duke that you wou'd firſt bring my Lord *Howard* to him and then to the King, and I ſpoke to the Duke, and he ſaid you were a Raſcal, and he wou'd not meddle with you.

Fitz-Harris. Did not my Lady *Portſmouth* tell me the Duke was angry: I appeal to my Lord *Howard* if he did not ſpeak to my Lady *Portſmouth* about Money for me?

Lord *Howard.* I did ſo.

Mrs. *Wall.* My Lord did ſecond my Lady to get you ſome Charity.

[Here Mrs. *Fitz-Harris*'s Petition and the King's Letter to the Duke of *Ormond* was read, about a Penſion in *Ireland.*]

Mr. *Cowling* was call'd.

He depos'd, That Mrs. *Wall* told him that Mr. *Fitz-Harris* came to her two or three Nights before he was taken up, and wou'd have had Admiſſion to the King, and ſhe wou'd have had him write down what he had to ſay, which he wou'd not, and ſhe refus'd to get him Admiſſion, and ſaid, her Blood chill'd, for ſhe was afraid he was come to the King for ſome Miſchief.

Lord *Howard* appear'd.

Fitz-Harris. I deſire your Lordſhip wou'd acquaint the Court what the Lady *Portſmouth* ſaid to you concerning me at your Coming thither, and if I did not introduce your Lordſhip.

Lord *Howard*'s Evidence of his being introduc'd to the Dutchess of *Portsmouth* and the King by the Prisoner's Means.

Page 759.

Lord *Howard.* Sir, In the Beginning of *October* last, about a Fortnight before the Sitting of the Parliament, you apply'd your self to me in the Name of the King, that I wou'd give my self the Honour of waiting on his Majesty, but I declin'd it, as having nothing worthy the offering his Majesty, and because I apprehended it might be the Occasion of some Indecency, for that I might be put upon declaring my self in some of my Sentiments contrary to his Majesty's, and I did peremptorily deny to go: Then you desir'd only that I wou'd wait on the Dutchess of *Portsmouth*, who wou'd be a good Instrument to the King in perswading him to a good Opinion of the approaching Parliament, and you said, you cou'd assure me she was in the same Interest I look'd towards, and that she was no Friend to the Duke of *York*: After much Intreaty I was prevail'd with to do my self that Honour to wait on my Lady Dutchess, but I was surpriz'd with a greater Honour of finding the King there; but I am afraid, if this 250*l.* was given for bringing me thither, his Majesty does not think he deserv'd it at this Time: About ten Days after this I had another Opportunity of seeing his Majesty, by Mr. *Fitz-Harris*'s Means, which is the last Time I had the Honour to see the King but in publick: After the Parliament was ended I confess I did wait on the Dutchess of *Portsmouth*, and tell her I was sensible she had endeavour'd as much as lay in her to perswade the King to a good Opinion of the Parliament, and to give them a Time of Sitting, and an Opportunity of explaining their Intentions for his Service; and when I parted from her, I did make it my humble Request to her that she wou'd be pleas'd to represent your Condition to the King, since, by your Means, I had the Honour to be shew'd the Way to her Grace's Lodgings.

Fitz-Harris. Did not I come to you with a Message that Night, before my Lord *Stafford* was condemn'd?

Lord

Lord *Howard.* You did, and told me, as a Secret, that you brought it at the Desire of the King, and said, it was what he wou'd take as a great Instance of my Resignation to his Pleasure, and I might promise my self all the Kindness a Prince cou'd shew to his Subjects, if I wou'd go the next Day and give my Vote for the Lord *Stafford*: I told you I had all the Obligations of Blood and Nature to dispose me to favour the Lord *Stafford* as far as cou'd consist with the Integrity of a Judge; but tho' I was wavering in my Thoughts before, now, by the Grace of God, I wou'd go, tho' I was carry'd on Mens Backs, to the House. I said, I see 'tis the Concern of the Protestant Cause, and if all the Relations I have were melted down into my Lord *Stafford*, if I had but Breath enough to pronounce his Doom, he shall die.

Otes. I desire I may go away; the Crowd is so great I cannot stand. Page 760.

Mr. Attorney. It may be Part of the Popish Plot to keep Dr. *Otes* here to kill him in the Crowd.

Earl of *Arran* appear'd.

Fitz-Harris. Did not I shew you this Libel the *Sunday* I was taken?

E. of *Arran.* You did shew me a Libel, but whether this or no I can't say: I took him for an honest Man, he is of a good Family, and I happen'd to be at Dinner with him the Day he was taken, and he pull'd out some Papers; I told him he wou'd do himself a Mischief with such Papers; and after we had drank a Bottle we parted: Soon after I came Home I heard he was seiz'd.

Fitz-Harris. Then your Lordship did not read the Paper?

E. of *Arran.* No, indeed, not I.

Fitz-Harris. Did not I tell you I had a Promise of a Quit-Rent for secret Service?

E. of *Arran.* I don't know what he told me of a Quit-Rent particularly, but my Business that Day was, to serve him about the Reversion of a Pension he had in the Right of his Wife,

Wife, and I thought he well deſerv'd it. I am ſorry to ſee his Father's Son, as the Phraſe is in *Ireland*, accus'd of ſuch a Crime.

Mr. Attorney. Was he ever employ'd by the *French* King, or the *French* Ambaſſador's Confeſſor?

E. of *Arran*. Never as I heard of; I thought him the loyaliſt of any of his Religion: He own'd himſelf a Papiſt, and we have had ſome Diſputes about it.

Mr. Secretary *Jenkins* appear'd.

Fitz-Harris. I deſire your Honour to acquaint the Court what the King ſaid of me: Did not he own he had employ'd me.

Mr. J. *Jenkins*. The King conjur'd him to declare who the Author of the Libel was, but I don't remember the King ever own'd he had made Uſe of him.

Fitz-Harris. My Lord *Conway*, don't you remember it?

E. of *Conway*. No, upon my Honour; but I have heard him ſay he formerly employ'd you in ſome trifling Things.

Fitz-Harris. Did not the King declare in Council I had got Money of him?

E. of *Conway*. That was for my Lord *Howard* of *Eſcrick*'s Buſineſs.

Mr. Serj. *Jefferies*. Did you hear the King declare when he firſt ſpoke with him?

E. of *Conway*. He was taken up the 27th, and the King never ſpoke with him till the 28th.

Fitz-Harris. Did not you tell me, Mrs. *Wall*, that if the King put himſelf upon the Parliament they wou'd uſe him as his Father was uſed.

Mrs. *Wall*. No; you promis'd to bring in my Lord *Howard*, but they found themſelves much miſtaken in what was promis'd he wou'd do when he came in.

Page 761. Mr. *Bulſtrode* appear'd.

Fitz-Harris. What Meſſage did you bring from the King to my Wife.

Mr. *Bulſtrode*. Mrs. *Harris*, ſoon after her Huſband was confin'd, deliver'd a Petition to the

King

King in the Park, and the King gave it me, and bid me carry it to the Secretary of State: I told the King Mrs. *Fitz-Harris* was very importunate, and desir'd some Answer; the King then said, if she had a Mind to petition the Council she might, he wou'd not meddle or make with it; and I told her nothing cou'd do her Husband any Service unless he wou'd discover the Author, and she said, if the King wou'd but let her speak with her Husband she was sure she cou'd do his Majesty Service, and prevail with her Husband to discover the Author; and the King order'd some of the Council to examine her: But she said, if she might not speak with the King alone, she wou'd not speak a Word, or be examin'd.

Fitz-Harris. Pray, Mr. *Peacock*, what did Mr. *Bulstrode* say?

A Witness shall not be ask'd what another has said.

L. C. J. You must not ask one what another said, 'tis no Evidence; Mr. *Bulstrode* is here, ask him himself.

Richard Perrot, the Foot-Man, was call'd.

Fitz-Harris. How long is it since you brought me the Money from my Lady *Portsmouth*?

Perrot. I never brought any.

Lady Dutchess of *Portsmouth* appear'd.

Lady Dutchess of *Portsmouth*'s Evidence.

Fitz-Harris. I wou'd know of your Grace if I was not employ'd to bring several Papers to the King, particularly the Impeachment against your Grace, and if your Grace did not tell me it was a great Piece of Service to bring such Papers, and if I could find out Men serviceable for that Purpose I shou'd do the King good Service; and if I did not tell your Grace I knew one *Everard*, who knew all the Clubs in the City, and cou'd tell the Designs of my Lord *Shaftsbury* and all that Party, and if your Grace did not encourage me to go on, and by your Grace's Means I came to speak with the King about it.

Lady Dutchess. I was not concern'd in any Sort of Business with him, only he desir'd me to give a Petition to the King to get his Estate in

Ireland, and I did, three or four Times, ſpeak to the King about it.

Page 762. *Fitz-Harris.* Had your Grace never any Papers from me; not that of the Impeachment?

Lady Dutcheſs. No.

Fitz-Harris. On what Account then had I the Money I receiv'd?

Lady Dutcheſs. For Charity.

Fitz-Harris. I am ſorry your Grace is ſo much under the Influence of Mrs. *Wall*.

Lady Dutcheſs. I come not here to wrangle with you Mr. *Fitz-Harris.*

Fitz-Harris. Have I had any Money of your Grace ſince you knew my Lord *Howard?*

Lady Dutcheſs. Never; but that for Charity: If I cou'd do you Good I wou'd, but I don't ſee how I can be farther ſerviceable to you. [Then her Grace went away.]

L. C. J. Well, have you any thing farther to ſay?

Fitz-Harris. My Lord, I cannot forbear complaining of the hard Uſage I have receiv'd; greater Oppreſſion has not been before; others have had all the Liberty they cou'd deſire to enable them to make their Defence, which has been deny'd me; I have been a cloſe Priſoner, had no manner of Help, or any thing allow'd me to refreſh my Memory; and tho' my Lady *Portſmouth*, Mrs. *Wall*, and the reſt, are pleas'd to ſay I was not employ'd or receiv'd Money for ſecret Services, it is well known I did ſo: And tho' Mr. *Everard* wou'd make a *French* Story of it now, he knows 'tis otherwiſe: He told me he was well acquainted with my Lord *Shaftſbury* and my Lord *Howard*, and knew all their Clubs and Intrigues in the City, and I ſaid, it wou'd be of the greateſt Conſequence that cou'd be if he wou'd continue his Diſcoveries: I never was in the *French* Intereſt, tho' I humour'd his Diſcourſe, that he might reduce the Paper he accuſes me of under ſome Heads, and I no ſooner had it but I brought it to *White-Hall*; and whereas he ſays he was to have forty Guineas, it was but forty Shillings he deſir'd in Re-

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gard of his Poverty: When I came to *White-Hall* I ſhew'd the Paper to a Gentleman who was to have given it to my Lord *Clarendon*, but before my Lord had it I was taken up. What I did was with an Intention to ſerve the King, in diſcovering the Deſigns againſt him, as I was employ'd, tho' both the Secretaries are ſo unkind as not to declare it: I am not aſham'd to ſpeak it tho' my Life be loſt upon it; and I hope the Jury will conſider theſe are great Perſons I have to do with, and in Matters of State it is hard to get any Thing out of them but what is for their Advantage, and ſo I am left in a ſad Condition. And I muſt inſiſt upon it, that if the Gentlemen of the Jury bring me in Guilty, they ſhed my Blood and overthrow the Law and Courſe of Parliament. My Lord, I have a Copy of the Impeachment, and Votes of the Houſe of Commons, which I deſire I may deliver to the Jury. Page 763.

L. C. J. No, that cannot be.

Fitz-Harris. I was impeach'd by the Houſe of Commons for this very Thing, of which I deſire the Jury wou'd take Notice.

Mr. Serj. *Jefferies.* Therefore you are not guilty; is that the Conſequence?

Then Mr. Solicitor and Mr. Serjeant *Jefferies* having ſumm'd up the Evidence for the King, the Lord Chief Juſtice directed the Jury. Page 764. Page 765.

The Chief Juſtice told the Jury there was no doubt but the Libel contain'd treaſonable Matter; that a more virulent and villainous Book was never written; that it tended to defame the King and his Anceſtors, to blaſt all that come after him, and incite the People to Sedition and Rebellion; that this was a Piece of Art of the Jeſuits which exceeded all they had done before, and they had found an apt Inſtrument, an *Iriſh* Papiſt, one who had been continually concern'd with them in ſeveral Plots and Papers of this Nature: And that the Evidence was as ſtrong againſt the Priſoner as ever was given againſt a Traitor: That it did appear by the Priſoner's Witneſſes, the King had given him Money in Charity, The Chief Juſtice directs the Jury. Page 766.

Charity, and the Priſoner inſinuated, by Way of Defence, that the King gave it him to trepan his Subjects; and that this was another Piece of Virulency of the Papiſts, to give an ill Interpretation to his Majeſty's beſt Actions; nor cou'd it be thought the King was in a Deſign to blacken his own Family for ever, and to ſtir up his Subjects againſt himſelf, to endanger his Crown and all that he had in the World, and for which no colourable Deſign cou'd be imagin'd: That this was to wreſt the King's Charity and Generoſity to ſuch Purpoſes as few Men wou'd have had the Forehead to have done. —— That as for the Impeachment of the Houſe of Commons which Mr. *Fitz-Harris* had ſo much inſiſted upon, that Matter had been pleaded to the Juriſdiction of the Court, and was now over, and that they were to have no Conſideration of it now; that they were ſworn but to one Point, (*viz.*) Whether the Priſoner was guilty of this Treaſon or not; as to the Authority of the Court, that was a Queſtion proper for the Court, and they had determin'd it, and the Priſoner talk'd fondly concerning his Blood lying at their Doors, and he thought ſuch Inſinuations wou'd not weigh with Men of any Underſtanding.

Page 767.

The Jury doubt whether they may legally give a Verdict, the Priſoner being impeach'd for the ſame Crime.

Johnſon, the Fore-Man. My Lord, there is a Vote of the Commons, which ſays, he ſhall not be try'd by an inferior Court; now we take upon our ſelves to be Judges of this Man, it is the Office of the Jury to acquit or condemn him according to the Evidence, now if we ſhou'd acquit him in this Caſe, what Aſſurance have we he ſhall be acquitted, we ſhall but fore-judge a Parliamentary Cauſe; therefore I don't know how far we are compellable by Law to give a Verdict in this Caſe upon him.

A Vote of the Houſe of Commons cannot alter or ſuſpend the Law.

L. C. J. As to the Juriſdiction of the Court, that is not at all before you; and as to the Vote of the Houſe of Commons, if any ſuch there be, that cannot alter the Laws of the Land, or juſtify any of us in departing from our Duties, any more than a Letter or Mandate from

from the Prince; we are to take no more Notice of one than the other. We are upon our Oaths to do Juſtice according to the Law of the Land, you likewiſe are upon your Oaths, and ſworn to do Juſtice in your Sphere, and no Man that underſtands the Conſtitution will aſſert that a Vote of the Houſe of Commons can alter the Law: Beſides, Gentlemen, this Doubt was mov'd to us by the Grand Jury, and to take away all Scruple, all the Judges of *England* debated the Matter, and it was our unanimous Opinion we had a Juriſdiction to try this Man.

Mr. J. *Jones.* We have all of us a great Reverence for the Houſe of Commons, but as my Lord has told you, ſo I tell you my Opinion, that a Vote of the Houſe of Commons does not in the leaſt alter the Law; for if it did the Houſe of Commons muſt have a Legiſlative Power; and were Mr. *Fitz-Harris* to be acquitted here, and afterwards ſhou'd be queſtion'd in Parliament, he won'd ſay he had been upon his Tryal by his Peers, and had been acquitted by his Peers upon ſolemn Evidence: Your Office is to be Jurors and not Judges, your Commiſſion is your Oath, and if you can ſay he is not guilty, let it lie upon your Conſciences, the Danger of the King's Blood and Life be upon you.

Mr. J. *Dolben.* If there were any thing in what you have ſaid, it concerns us that are Judges, and not you at all, for 'tis a Matter of Juriſdiction: You have ſworn to try this Matter and give a true Verdict, and do you now ſcruple whether you ſhall give any Verdict or no; wou'd you acquit him after ſuch an Evidence as has been given? There muſt be ſomething more in it than for the Sake of ſuch an unreaſonable Scruple. Page 768.

Mr. J. *Raymond.* I am of the ſame Opinion, truly.

Mr. *Johnſon.* I cou'd not tell what I was to be ſworn to; I cou'd not know what the Matter wou'd be that wou'd come before us, and

therefore took the Liberty to make the Motion now.

Mr. *Fitz-Harris* convicted.

L. C. J. We are ready to give all the Satisfaction we can, and therefore have given a fair Answer to it.

Then the Jury having withdrawn for half an Hour, brought the Prisoner in *Guilty*.

Mr. Attorney then mov'd for Judgment, but the Court bid him move it another Day.

June 15, 1681, Mr. *Fitz-Harris* was brought to the Bar to receive Sentence, he desir'd Transportation; but the Court told him, they cou'd do nothing in that; and the Chief Justice having shewn the aggravating Circumstances the Prisoner's Crime was attended with, he proceeded to pronounce Judgment on him as a Traytor.

Page 769.

Judgment pass'd.

June 22 there issu'd a Writ out of the King's Bench to the Lieutenant of the Tower, reciting the Judgment, and commanding the Lieutenant to deliver the Prisoner to the Sheriff of *Middlesex* the 1st of *July* following; and another Writ to the Sheriff, to receive him, and cause him to be executed according to the Sentence: And the Prisoner was executed accordingly at *Tyburne*.

Writs issu'd to the Lieutenant of the *Tower*, and the Sheriff, for his Execution.

Page 770.

He is executed.

The TRYAL *of Dr.* OLIVER PLUNKET, *Titular Primate of* Ireland, *in Trinity Term the* 8th *of* June, 33 Car. 2. 1681, *at the King's Bench Bar, for High Treason committed in* Ireland.

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The Doctor's Arraignment.

IN *Easter* Term the 3d of *May* 1681, Dr. *Plunket* was arraign'd at the King's Bench Bar for High Treason: The Doctor said, he had been indicted and arraign'd for the same Treason in *Ireland*; but on the Day appointed for his Tryal no Witnesses appear'd against him, and he made some Doubt whether he cou'd be try'd here for the same Fact.

Arraign'd before in *Ireland*.

Treason committed in *Ireland* may be try'd here *Auter foitz* arraign'd no Bar.

The Court acquainted him, that by an *English* Statute he might be try'd in *England* for Facts arising in *Ireland*: And that an Indictment and Arraignment, whereon there was no Conviction or

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Acquittal, cou'd not be pleaded in Bar of an Indictment for the ſame Treaſon, whereupon he pleaded *Not Guilty*, and deſir'd Time to ſend for his Witneſſes from *Ireland*; and the Tryal was appointed to be the firſt *Wedneſday* in *Trinity* Term, being five Weeks after his Arraignment.

His Tryal comes on.

Wedneſday the 8th of *June*, the Doctor was brought to his Tryal at the King's Bench-Bar: The Dr. ſaid, he had been a Year and half a cloſe Priſoner in *Ireland*, and he was adviſ'd, when he was brought over, that he cou'd not be try'd here; for that the Statute of *Hen.* VIII. nor any other Statutes of *England*, were in Force in *Ireland* ſince *Poigning*'s Law, unleſs *Ireland* was particularly nam'd in them; but that the Court, he found, were of another Opinion: And he had ſent for ſeveral Records of the Convictions of ſome Witneſſes that were to be produc'd againſt him, but the proper Officers had refus'd him Copies of them, without an Order of Court; and that ſeveral of his Witneſſes were afraid to come over without the Protection of the Court; ſo that he was very much unprepar'd for his Tryal, and deſir'd he might have the Aſſiſtance of the Court to bring over ſuch Records and Witneſſes as he wanted; and that he might have his Tryal put off 'till he cou'd have them; Affidavit having been made in Court of theſe Matters the Day before.

Page 772.

The Court anſwer'd, That if his Witneſſes were ſo conſcious they wou'd not come, they cou'd not help it; and that he had had more Time than uſual to prepare for his Defence already, and order'd a Jury to be ſworn.

Page 773.

The Indictment for Treaſon, in conſpiring the Death of his Majeſty, and the Subverſion of the eſtabliſh'd Religion and Government, by inviting a *French* Invaſion, *&c.*

He was indicted by the Name of *Oliver Plunket*, of *Weſtminſter*, in the County of *Middleſex*, Doctor of Divinity: And the Indictment ſets forth, That the Priſoner, not weighing the Duty of his Allegiance, *&c.* did, on the 1ſt Day of *December*, in the 32d Year of the King, and divers other Days and Times, at *Dublin* in the Kingdom of *Ireland*, traitorouſly compaſs and imagine the Death of the King, and the Subverſion of the Religion and Government eſtabliſh'd there: And that the Priſoner, to accompliſh his ſaid traitorou; Intentions

and Imaginations, did, at the Time and Place aforeſaid, traitorouſly aſſemble, conſult, and agree, with divers other Traitors unknown, to depoſe and murder his Majeſty, to raiſe War, and introduce the Romiſh Religion into the Kingdom of *Ireland*: And that in order the ſooner to effect his ſaid traitorous Purpoſes, the Priſoner, together with other falſe Traitors unknown, did agree to contribute and pay divers Sums of Money to certain Perſons, to promote them to kill the King, and introduce the Romiſh Religion: And did alſo then and there collect, pay, and expend ſeveral other Sums of Money to maintain and aſſiſt the ſaid Traitors in their ſaid Treaſons, againſt the Duty of his Allegiance, the King's Peace, *&c.*

The King's Counſel open the Indictment and the Evidence.

The Indictment being read, and the Jury charg'd with the Priſoner, Mr. *Heath* open'd the Indictment, and Mr. Serj. *Maynard* and Mr. Attorney open'd the Evidence: After which the King's Witneſſes were call'd, and firſt,

Page 774.

Florence Wyer was ſworn.

Mr. Sol. Gen. Pray acquaint the Court what you know of any Plot to bring in the *French* King, or to introduce the Romiſh Religion in *Ireland*.

Evidence of the *French* King's Deſign to invade *Ireland*, and the Priſoner's collecting Mony to facilitate it.

Wyer. The Contrivance began in 65; in 67, the King of *France* ſent Col. *Miles*, *Rely*, and Col. *Bourne*, into *Ireland*, to muſter what Men they cou'd, and promis'd to ſend an Army of 40000 Men to *Carlingford* the *Auguſt* following, with Commiſſion to eſtabliſh the *French* King's Authority and the Roman Catholick Religion; and *Edmund Angle*, who was a Juſtice of Peace and Clerk of the Crown, headed the Northern Rebels, and fir'd the chief Town in the County of *Longford*, and deſign'd to open the Goal for the Priſoners to join them, but the People who were fled to the Caſtle wounding *Angle*, that he fell from his Horſe, the Rebels fled, and one *Charles Mac-Canal* took all the Papers out of *Angle*'s Pocket, which prevented the Diſcovery of the whole Deſign. On this *Bourne* was ſuſpected, and committed to *Newgate* in *Ireland*, and *Rely* fled to *France*; and preſently after, *Raley* (who was then Primate and chief Promoter of this Plot) dy'd; then one *Duffy*

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(by the People's Consent) shou'd have succeeded; but on the Prisoner's engaging to surprize the Kingdom before the Government were appriz'd (provided the Pope and *French* King wou'd send Forces sufficient to help to effect it) he was preferr'd to the Primacy: I was at *Armagh* Fryery the first Year of his Coming; and one *Quin* telling him, he thought *Duffy* wou'd have been Primate, the Prisoner answer'd, ['Tis better as 'tis, for *Duffy* hath not Wit to manage that which I have undertaken for the general Good of our Religion.]

L. C. J. What was that, did he explain himself? Page 775.]

Wyer. No farther than those Words; but I (knowing the other Plot) conceiv'd 'twas to bring in Popery, and subject the Kingdom to the *French* King; and the Prisoner order'd the inferior Priests, by Warrant, for several Years successfully, to collect Sums of Money, equivalent to their Parishes, *sub pœna suspensionis*, to redeem their Religion from the *English* Power, and to supply the *French* Forces when they came over: He procur'd Money out of the Exchequer for the *Mac-Donels*, on Pretence of Service to the King, and sent them to *France* to improve, and return with the *French* Forces to surprize *Ireland*. I saw a Letter of his to the Grand Rebel *Flemming*, desiring him to go with his Men to *France*, and that he shou'd return a Colonel; and that he (the Prisoner) wou'd see them safe landed again in *Ireland*, in Spite of all their Enemies.

Mr. Attorney. Do you know his Hand?

Wyer. Yes, as well as my own. Capt. *O Neal* carry'd three Regiments to the *French* King, and used to come Yearly for Recruits: He perswaded my Brother over, and importun'd me; saying, 'Twas to improve myself in Military Discipline, and I shou'd return a Captain under the *French* King to surprize *Ireland*, settle the Popish Religion, and then be restor'd to my Estate; and he told me, Dr. *Plunket* was the only Man trusted to make Preparations againft the *French* Forces landed at *Carlingford*.

L. C. J. Have you ever heard him own himſelf Primate?

Wyer. Yes, in the Priory, and that he was made ſo by the Pope; and he writes himſelf *Oliverus Armacanus Primas & Metropolitanus ſolius Hiberniæ.* I have ſeen his Commands to his inferior Dignitaries in the Time of his Impriſonments, that they ſhou'd not forget to bring in the Monies aſſeſs'd for Supply of the *French* Army, for that his Impriſonment wou'd prevent Suſpicion.

Mr. Attorney. What do you know of his iſſuing Warrants for Liſts of Men?

Wyer. I never ſaw any, but have heard the Prieſts ſay, they were to inform him of the Number of Men in each Pariſh, from 16 to 60; but I have ſeen him go from Port to Port, as *Derry*, *Carricfergus*, *Caſtledown*, *Carlingford*, *&c.* and have heard, 'twas to view the Strength of the Garriſons; and that he pitch'd upon *Carlingford* as moſt convenient for the *French* Army to land.

Mr. Attorney. Dr *Plunket*, will you aſk him any Queſtions?

Dr. *Plunket.* Why did he let it reſt ſo many Years without Diſcovery?

Wyer. *Moyer* and I conſulted, and he, by my Order, diſcover'd it; but (by the Priſoner's Means) he has gone in Danger of his Life for it.

Henry O-Neal was ſworn.

Henry O-Neal. In *Auguſt* 78, I was at Vicar-Gen. *Brady*'s, whither Biſhop *Tirril* came with 40 odd Horſe-Men, and there gave them an Oath to deſtroy all the Proteſtants from one End of *Ireland* to the other in one Hour, and I was oblig'd to take it; and *Brady* ſaid, that he wou'd return in two Days, with an Order from my Lord *Oliver Plunket*, and bid them they ſhou'd not fear its Effect, for that *Plunket* and he had ſent Money into *France* to bring over *French* Forces: In *Sept.* following, there was another Meeting at *Virginia* in *Connaught*, where they took *Mac-Leigh* a Prieſt, by whoſe Deſire I went to *Dublin*, and diſcover'd it to Sir *John Davis*, but *Plunket* I never ſaw.

Page 777.

Then *Neal O-Neal* was ſworn.

He depos'd, That he was with his Foſter-Mother, who was Houſe-keeper to Vicar-Gen. *Brady*, and ſaw Biſhop *Tirril* come to give the aforeſaid Oath; and being aſk'd why he did not diſcover it before? anſwer'd, [There were many wiſer than I there that did not do it.]

Then *Owen Murfey* was ſworn, but having nothing to ſay but what he heard from others, he was ſet by.

Then *Hugh Duffy* was ſworn.

Mr. Attorney. Tell my Lord what you know of this Plot and the Priſoner.

Duffy. I was Chaplain to Dr. *Duffey*, (the Queen of *Spain*'s Confeſſor) who was very intimate with the Priſoner, and I have been often with them in 73, 74, and 75, when they have been contriving to carry on the Plot; and the Priſoner ſaid, he cou'd prevail with the King of *France*, and Dr. *Duffy* with the King of *Spain*, and they agreed to raiſe from 10 to 40 *s. per Ann.* on each Prieſt in *Ireland*, according to his Penſion and Pariſh.

Mr. Attorney. What Diſcourſe had they about the *French*?

Duffy. I went to live in a Convent in *France*, and in the Year 77 Cardinal *Bouillon* ſhew'd me a Letter from the Priſoner, deſiring the Cardinal to prevail with the King of *France* to forbear invading *Spain*, and admir'd he did not rather wage War with *England*, and aſſiſt poor *Ireland*, that was tormented with Heretical Juriſdiction. Page 772.

Mr. Attorney. Sir, You were ſpeaking of raiſing Money, did you ſee any Precepts about it?

Duffy. Yes, ſeveral; I was Curate to Father *Murfey*; and, in his Abſence, have receiv'd Letters from the Priſoner as Primate (and ſtil'd *Oliverus Armanicus, &c.*) to raiſe 20 and 40 *s.* a Time, and have ſent it to his Houſe for his Agent at *Rome*.

Mr. Attorney. Were you preſent at any of the General Conſultations?

Duffy. Yes, at *Clouds*, (in 71) where 500 People were confirm'd; and they afterward withdrew into a Garden, where the Priſoner ſtood in the Midſt, and every one kneel'd and kiſs'd his Hand; and 'twas then agreed, that the Gentry of *Armagh*, *Mo-*

Monaghan, and *Connaught*, ſhou'd join the *French* and *Spaniſh* Forces; and then they had a more private Conſult about getting a Liſt of thoſe who were Officers in the late Rebellion, and of thoſe who had loſt their Eſtates, becauſe they thought they wou'd be moſt forward to deſtroy the Proteſtants.

Mr. Attorney. Did you go into the Conſult?

Duffy. Yes, and was as willing to promote it as any one: The Priſoner likewiſe made a Speech of our Faith and Religion; and that each Man ſhou'd provide Money according to his Ability, for the *French* and *Spaniards*, who were ſhortly to come over.

Page 779. Mr. Attorney. Do you know of any Order he ſent to raiſe Money, after he was taken?

Duffy. I ſaw two or three for that Purpoſe; and he ſaid, that the only Time to effect it, was whilſt he was in Priſon, becauſe he ſhou'd not be ſuſpected; and that the *French* and *Spaniards* ſhou'd take that Advantage.

Mr. J. *Jones.* Did the Lay-Gentry agree to pay nothing?

Duffy. I know nothing of them; I paid for two or three Years towards the Deſign.

Mr. Attorney. What do you know of a Liſt to be given in of all Perſons of ſuch an Age?

Duffy. By the Priſoner's Order I gave him a Liſt of the Age of every Perſon in the Pariſh of *Coghan*, where I was Curate, being in Number about 250.

Mr. Attorney. Do you know any Thing of his going to view the Ports?

Duffy. I accompany'd him to *Carlingford*, when he went to view the Place; there was no great Garriſon in it; and as a Ship might come up to the Gates and ſurprize the Town, he concluded that the *French* Army might ſafely land there.

Mr. Attorney. What do you know of delivering Ammunition and Arms?

Duffy. He ſent ſome of the collected Money to get Ammunition.

Dr. *Plunket.* Can you ſhew any Order which came to you to raiſe Money?

Duffy.

Duffy. I brought none, becauſe I thought they were needleſs; and I have ſeen not only his Paper to the County of *Monaghan*, but alſo twenty of them pay Money.

Plunket. Why did not you diſcover this to ſome Juſtice of Peace? Page 780.

Mr. J. *Dolben.* He tells you he was as willing then to forward it as you.

Duffy. I was ſo; but ſeeing how the poor People of *France* are brought into Slavery by the *French* King, I had rather the Devil ſhou'd reign over us than a *Frenchman.*

Mr. Solicitor. Tell how you came to remember that you ſaw him at Sir *Nicholas Plunket*'s.

Duffy. Biſhop *Duffy* and the Priſoner had a Difference there; and the Biſhop ſaid, were I as ill a Man as you, I cou'd hang you, and might have been Primate, if I'd have undertaken thoſe ill Things you have done; and Sir *Nicholas* aſking what 'twas, the Biſhop anſwer'd, to raiſe 60000 Men when ever the *French* or *Spaniards* ſhou'd wage War with *England*, *Scotland*, or *Ireland*; and the Priſoner ſaid, 'twas as much to exalt the Romiſh Clergy and thoſe Gentry who had loſt their Eſtates, as for his own Good.

Plunket. Is not this out of Malice for my correcting ſome of the Clergy?

Duffy. As I was a Fryer, you had nothing to do with me.

Then *Edmund Murfey* was ſworn.

Mr. Attorney. Tell your Knowledge of Dr. *Plunket* and the *Iriſh* Plot.

Murfey. Out of nine Witneſſes, I have but one in Town; but if you'll reſpite the Tryal 'till next Term, then I can bring 10 Witneſſes.

Mr. Attorney. Do you ſpeak your own Evidence?

Murfey. I refer you to the King and Council for that; I may be call'd in Queſtion for this Evidence.

Mr. Attorney. Remember what you ſwore before the Grand-Jury, is that true, and tell it?

Murfey. I can't ſay but that it's true, but I have forgot it.

Mr.

Mr. Attorney. I'll refreſh your Memory. What do you know of *Plunket*'s Orders to raiſe Money for the Prieſts?

Murfey. There were Orders from the Vicar-General, I ſuppoſe, by his Direction; I had them in my Hand, but I had them from another, not from him.

Mr. Attorney. What Talk had you with *Oliver Plunket* about raiſing Money? Tell the Truth.

Murfey. About raiſing Money! I did not converſe with him about Money; I know, if the Duke of *York* and Duke of *Ormond* had proceeded according to Intention, it was expected the *French* and *Iriſh* wou'd, at the ſame Time, fall on the *Engliſh* Nation.

Page 781. Page 725.

L. C. J. Pray, anſwer directly; Have you diſcours'd with the Priſoner about raiſing Money in *Ireland*?

Murfey. I have diſcours'd the Vicar-General, and had Orders from him, and ſeen Money paid him, but none to *Plunket*.

L. C. J. Come, don't trifle, have you had any Diſcourſe with Mr. *Plunket*?

Murfey. Yes, about this, that if the Duke of *York* and Duke of *Monmouth* fell out, he had ſome Men to raiſe, and that if the Duke of *Monmouth* wou'd raiſe the Proteſtant Religion.——

L. C. J. Were you a Proteſtant, Sir?

Murfey. No, I am a Prieſt; but it's indifferent to me whether I be a Proteſtant or a Prieſt, and to ſee ſo many Witneſſes come in that never knew *Plunket*, makes me forget my ſelf.

L. C. J. Will you anſwer directly, and tell me what diſcourſe you had with Primate *Plunket*?

Murfey. My Lord, I did not impeach Primate *Plunket*, but the Officers and Juſtices, that he ſhou'd find ſo many Catholicks in *Ireland* if the Duke of *York* and Duke of *Monmouth* fell out.

Mr. Serj. *Jefferies.* I ſaw him look in his Hat, I deſire he may be ſearch'd if he has not Papers about him.

[Then he went out of the Court, and cou'd ſcarce be perſwaded to return.]

Mr. At-

Mr. Attorney. Mr. Solicitor and I heard him give fuller Evidence in all Particulars than *Duffy* to the Grand Jury, but the Tryal coming on he abſconded, and I heard he was at the *Spaniſh* Ambaſſador's, and ſent for him; but the Ambaſſador's Servants beat the Meſſengers, but his Excellency being ſent to, promis'd he ſhou'd be brought; and he told me laſt Night that what he hah ſworn before the Grand Jury was true, and that he was ready to make it out.

Murfey. I told the Grand Jury that my Lord *Plunket* deſign'd to get 60 or 70000 Men in *Ireland* if the Duke of *York* and Duke of *Monmouth* ſhould fall out.

Mr. Attorney. Not one Word of that did he ſay.

L. C. J. What were thoſe Men to do?

Murfey. To eſtabliſh, if Occaſion ſhou'd be — the Romiſh Religion, as I underſtood.

Mr. J. *Jones.* And you underſtood it from *Plunket* himſelf?

Murfey. As ſoon as I receiv'd Letters from the Vicar-Gen. to collect Money, I ſent 'em to a Privy Councellor.

L. C. J. Don't you know that *Plunket* was engag'd to aſſiſt the *French* Army?

Murfey. I have diſcours'd him about ſeveral Matters, but don't know it by him: I had a Correſpondence in *France* with one *Maccarty* at the ſame Time. Page 782. Page 726.

Mr. J. *Dolben.* With whom had *Plunket* Correſpondence in *France*, and to what End?

Murfey. With Dr. *Cray* and others, but I don't know how theſe People come to ſwear againſt him.

Mr. Serj. *Jefferies.* He has fenc'd from the Beginning, I deſire he may be committed. [Which was done.]

And *John Mac-Leigh* was ſworn.

Sir *Fr. Withens.* Tell the Court what you know of the Plot to bring the *French* into *Ireland.*

Mac-Leigh. When I was Pariſh-Prieſt, in the County of *Monaghan*, I had Orders from Dr. *Plunket* to raiſe Money in my Pariſh, *ſub pœna ſuſpenſionis*,

ſuſpenſionis, and I paid him 40*s.* in 74, 50*s.* in 75, and at other Times other Sums, which he ſaid was for Arms and Ammunition for the Roman Catholicks, and for bringing in the *French*; and ſeveral, who wou'd not pay it, were to be ſuſpended, for tho' we had other Superiors, yet, as Primate, he cou'd ſuſpend Biſhops, and other inferior Clergy.

Plunket. Why did you keep it ſecret all this while?

Mac-Leigh. I durſt not diſcover it my ſelf for fear of being ſuſpended and excommunicated, but in 77, I (being in *France*) ſent Mr. *Henry O-Neal* to *Dublin* to diſcover it.

Mr. Serj. *Jefferies.* Were you at Vicar *Brady*'s Houſe?

Mac-Leigh. Yes, and ſaw Biſhop *Tirrel* give the Oaths, as has been already teſtify'd.

Mr. Attorney. What do you know of any Letters from *Plunket*?

Mac-Leigh. When I was in *Brittany* with Biſhop *Tirrel* and Dr. *Cray*, Duke *John* of *Brittany* ſhew'd us a Copy of Dr. *Plunket*'s Conditions with the *French* King, which were to ſeize *Dublin*, *London-derry*, and all the Sea Ports, to levy War and deſtroy all the Proteſtants, and that the King of *France* ſhou'd protect them during his Life; they were writ in *Latin.*

L. C. J. What do you know of his being Primate, and on what Condition was he made ſo?

Page 783. Page 727. *Mac-Leigh.* He was made Primate by the Election of the King of *France*, on thoſe Conditions.

Then *John Moyer* was ſworn.

Mr. J. *Jones.* What do you know of Dr. *Plunket*, and of the Plot in *Ireland*?

Moyer. I know he was made Primate on his Engagement to reſtore the Catholick Government, and when I was in the Convent of St. *Frances*, at *Rome*, I heard ſeveral Cardinals ſay, that the Kingdom of *Ireland* ſhou'd come under the Catholick Government by Means of the Lord Primate *Plunket.*

Mr. At-

Mr. Attorney. What do you know of your ſelf?

Moyer. Coming from *Rome* I met a young Gentleman, of the Family of the *O-Neale*'s, in a Convent of the Order of St. *Francis*, who had been the Lord Primate's Page; he had a Packet of Commendatory Letters (as he ſaid) to the Secretary of the College, *de propaganda fide*, to enter him therein; and Father *Crawley* and I open'd them, and found they were written in *Latin* and *Italian*; I tranſlated them five Years ago, and am certain I have added nothing to the Senſe of them; but the Copy which I writ from the Original of the Primate's own Hand-writing, was taken from me laſt Year by the Soldiers, at my being ſeiz'd by Mr. *Murfey* and Mr. *Hetherington*, but I have here the original Statutes made at *Clouds*, ſign'd by Primate *Plunket*, and, by Miſtake, deliver'd a Copy to the Page.

[The Letter was read by him, and the Paper of Statutes ſhewn the Priſoner, who own'd 'twas his Hand.]

Moyer. There is an Order in thoſe Statutes wherein *Ireland* was bound to ſend Money to *Rome* on ſuch a Deſign.

Mr. Attorney. 'Tis 500 *l.* in the whole.

Plunket. My Lord, 'tis put in with other Ink; all Countries have an Agent at *Rome*, and he muſt have a Maintenance; 'twas 50 *l.* and for that Uſe, but there's a Cypher added. Page 784, Page 728.

L. C. J. Whether 50 or 500 is all one, the Money was to be rais'd by your Order, and you had better reſerve your ſelf to anſwer that and the Letter together; this is but ſmall Part of the Evidence.

Mr. Attorney. Pray relate what fell out about this Letter you were ſpeaking of.

Moyer. I met with two *Iriſh* Captains at *Marſeilles*, who knew the Contents of it as well as I, and ſaid, they hop'd, by the *French* King's Help, to have the Roman Catholick Faith ſet up in their own Country. After my Arrival in *Ireland*, I receiv'd Commendatory Letters to apply to my Lord Primate for Leave to preach

and hear Confeſſion, who approv'd me, and I then told him I ſaw the Contents of the Letter which he ſent by young *O-Neale*, and that the Intent was good if it cou'd be done without Bloodſhed; he paus'd ſome Time, and then deſir'd me to be ſecret, and ſaid, he did it not for his own Good, but the Good of Catholicks; and commended me to a Pariſh, and offer'd me high Promotion to further the Deſign amongſt my Friends and Relations, and ſuch as were old Commanders that I knew to be private. Shortly after, in 76, the Priſoner, Biſhop *Tirrel*, Captain *Con O-Neale*, and others, came to our Priory, and there agreed to ſend *Con* to *France* and *Barcelona*, with Inſtructions that they were ready to aſſiſt any foreign Army that ſhou'd help the Deſign; and Captain *Con* departed accordingly: Soon after my Lord Primate calls a General Provincial Council, and ſends Orders to all the Pariſh-Prieſts to levy Taxes, and to ſend new Liſts, to ſee if the Numbers agreed with thoſe they had ſent to *Rome*; and whilſt thoſe Lords collected the Money, Father *O-Neale* went to view the Forts of *Charlemont* and *Dungannon*.

Mr. J. *Dolben*. Have you paid him any Money?

Page 785. Page 729. *Moyer*. I (being a regular Prieſt) was exempted; but I have ſeen others pay Money, and ſaw the Orders which ſpecify'd the raiſing Money both for the Agent at *Rome* and to make Preparation for joining the *French* Army; and I being willing to prevent ſuch wicked Doings, inform'd the next Juſtice, who was as hearty in it as the Priſoner.

Plunket. I deſire to know when he left *Ireland*?

Moyer. In 62 or 63. I ſaw your Letters with the young Man at *Caprennica* in 72, and return'd to *Ireland* in 74.

Plunket. How did you know my Hand, which you had never ſeen?

Moyer. I have ſeen it to ſeveral Inſtruments and Letters which the Cardinals at *Rome* ſaid was your Hand, and I know it to be the ſame I have ſince ſeen; beſides, he acknowledg'd the

Letter

Letter ſent by *O-Neale*, and deſir'd me to be ſecret, as I have already ſaid, and he has ſince ſent Propoſals to offer me 100*l.* if I would not proſecute, (as they told me) and they gave me a Guinea in Hand.

Plunket. I deſire to know if this be his Writing, [ſhews a Paper] and that it may be read. [It was an Anſwer to a Citation from the Father-Guardian, dated 1 *July* 78, that if the Lord *Plunket* did not make Reparation for defaming him, he wou'd cauſe his Name to be fix'd on every publick Place.] And *Moyer* own'd 'twas his Hand.

Plunket. You ſee, my Lord, I had denounc'd him, and is it likely I ſhou'd truſt him with this Secret?

L. C. J. You flatter'd him then when you found he knew it, and promis'd to promote him.

Moyer. My Lord, dreading the Conſequences of a War, I apply'd my ſelf to a Privy Counſellor, gave in my Informations the 7th of *December* 76, and then he excommunicated me, and contriv'd Means to get the Letters out of my Hand.

Plunket. You may here ſee on what Account he fell out with me: Aſk him if this other Letter be his Hand? Page 786. Page 730.

Moyer acknowledg'd the Hand and read it, ['twas to his Father-Guardian, dated *April* 23, 78, and the Purport was, that he hop'd his Reverence had conſider'd the Wrong he had ſuſtain'd by his envious Adverſaries, only for ſtanding for the Fryers Rights, and ſtriving to prevent his Country's Ruin.]

Plunket. My Lord, what he calls the Deſtruction of his Country, is becauſe I hinder'd the Fryers to beg there; for that he differ'd with me, and here's his own Superior's Order upon it.

L. C. J. We can't meddle with your Superior's Orders, they are nothing before us.

Plunket. My Lord, he was indicted and convicted for giving Powder and Shot to the Rebels.

L. C. J. Produce the Record if you have any ſuch Thing.

Moyer. It was a Rebel ſwore againſt me that you abſolv'd.

Plunket. He hath been found guilty; he will acknowledge it himſelf.

L. C. J. He is not bound to anſwer ſuch Queſtions; What have you to ſay for your ſelf?

The Priſoner's Defence.

Plunket. My Lord, it's all Malice, as I cou'd eaſily make appear if I had been allow'd Time to have brought over my Records and Witneſſes; or had I been try'd in *Ireland*, both I and my Accuſers wou'd have been known.

L. C. J. Here are ſeveral Things you wou'd do well to anſwer, for they ſtick cloſe to you, *viz.* your undertaking to raiſe 70000 Men to join the *French*, your taking a Liſt of all that were able to bear Arms, your viewing the Forts to be ſecur'd, and the Ports where they ſhou'd land, and your raiſing Money for their Supply. All theſe are Treaſon, and you ought to conſider your Anſwer.

Page 787. Page 731.

Plunket. My Lord, I never receiv'd above 60 *l.* *per Annum*, which was for my own Maintenance: I never cou'd keep a Servant, and this was atteſted before the Council in *Ireland*, and 'twas a poor Livelihood; I had only a little thatch'd Houſe with a ſmall Library not ſeven Foot high, where this Fellow came to affront me becauſe I hinder'd him from Begging; and for the Men I never made a Liſt or gave Order for any to be made, neither was I ever at *Dungannon*, *Carlingford* *&c.* and its well known that's a very improper Place for any Army to land in; nor have I had any Agent in *Rome* this ſeven Years, for I was not able to maintain him; and if I had been allow'd till the latter End of the Term I wou'd have prov'd it to be mere Malice.

L. C. J. But you forget your own Letter wherein this Matter is contain'd.

Plunket. My Lord, I never entertain'd *O-Neale* as a Servant, nor ſent any Letters by him; he went over Begging, and was a Straggler in *Rome*, as I can prove by three Witneſſes.

Moyer.

Moyer. His Brother-in-Law will teſtify he was your Lordſhip's Page.

Then *Hanlet* was call'd.

Sir *Fr. Withens.* Did you know *Neale O-Neale?*

Hanlet. Yes, I ſaw him at *Mantua*; he was ſent to *Rome* with Letters from my Lord *Plunket*, and was eſteem'd as his Servant; he went on Foot but did not beg.

L. C. J. Mr. *Plunket*, if you wou'd aſk any Queſtions, or have any Witneſſes to produce, this is your Time, otherwiſe we muſt leave your Caſe to the Jury.

Dr. *Plunket* then repeated ſome of his former Obſervations, as to the Hardneſs of his Caſe, in being try'd in a ſtrange Country and without his Witneſſes, *&c.* After which, Mr. Solicitor General ſumm'd up the Evidence for the King, and Mr. Serj. *Jefferies* made ſome obvious Obſervations on the Evidence. Page 732.

Then the Chief Juſtice directed the Jury, that if they believ'd the Evidence that the Priſoner had incited the *French* to invade the Kingdom of *Ireland*, and collected Money to facilitate the Invaſion, they ought to find him guilty: And the Jury having withdrawn about a quarter of an Hour, brought the Priſoner in Guilty, and he was remanded to Priſon. Page 734. The Chief Juſtice directs the Jury. The Priſoner is convicted.

The 15th of *June*, 1681, Dr. *Plunket* was again brought to the Bar, and it being demanded of him what he had to ſay why Judgment of Death ſhou'd not paſs upon him according to Law, the Dr. made a Speech, ſhewing the Improbability of the Treaſon he was charg'd with, and tells the Court that none of theſe Witneſſes dare appear againſt him at his Arraignment in *Ireland*, where both his and their Characters were known, and where a better Judgment might have been made of the Truth of the Evidence by thoſe who were acquainted with the Situation of the Country, and other Circumſtances which wou'd have tended to clear up the Fact; but concluded, that ſince he had not an Opportunity of making out his Innocence he muſt ſubmit to their Mercy.

Page 736.

The Chief Juſtice acquainted the Priſoner that there were ſeveral Precedents of Perſons of that Kingdom who had been try'd here for Treaſons committed there, and particularly *O-Rorke*, and that he had been allow'd five or ſix Weeks to ſend for his Witneſſes, which was an unuſual Favour, and therefore he had no Reaſon to complain of any Hardſhips.

Sentence paſs'd.

Then the Lord Chief Juſtice pronounc'd Sentence on Dr. *Plunket* as a Traitor, and he was executed accordingly the 1ſt of *July* following.

He is executed.

Page 793. Page 737.

The TRYAL *of Sir* MILES STAPLETON, *Bart. for High Treaſon, at the Aſſizes for the County of* York, *the* 18*th Day of* July, 33 Car. 2. 1681.

The Priſoner ſent to *York*, there to be try'd, tho' the Indictment had been remov'd into the King's Bench.

THE Indictment being found at a Seſſions of *Oyer* and *Terminer* for the County of *York*, was mov'd by *Certiorari* into the King's Bench, where the Priſoner was arraign'd, and afterwards ſent down to be try'd in the County of *York*.

The Indictment for conſpiring the King's Death and the Subverſion of the eſtabliſh'd Religion and Government.

The Indictment ſets forth, That Sir *Miles Stapleton*, late of *Carlton* in the County of *York*, not weighing the Duty of his Allegiance, &c. did, on the 30th of *May*, in the 31ſt Year of the King, at the Pariſh of *Barwick* in *Elmet*, in the the *Weſtriding* of the ſaid County of *York*, traitorouſly compaſs, imagine, and intend the Death of the King and the Subverſion of the eſtabliſh'd Religion and Government; and that to accompliſh his ſaid traitorous Imaginations and Purpoſes, he, the ſaid Sir *Miles Stapleton*, together with certain other falſe Traitors unknown, did, on the ſaid 30th of *May*, at the Pariſh of *Barwick* aforeſaid, aſſemble, conſult, and agree to depoſe the King and put him to Death, and introduce the Romiſh Religion; and in Order to effect the ſaid Treaſons, did farther agree to contribute and pay to certain other Perſons, the King's Subjects, divers Sums

of

of Money to procure then to kill his Majesty and introduce the Romish Religion, against the Duty of his Allegiance, the King's Peace, *&c.*

To this Indictment Sir *Miles Stapleton* pleaded, Not Guilty.

Page 794. Page 738.

A Juror challeng'd by the King's Council because he gave his Dogs the Names of *Otes* and *Bedloe*. The Tryal put off for want of Jurors.

At the Lent Assizes Sir *Miles Stapleton* and the King's Council challeng'd so many of the Jurors that there did not remain enough to try him, whereupon the Tryal was put off till the following Assizes: Mr. J. *Dolben* held it to be a good Exception that was made by Sir *Thomas Stringer* (of Counsel for the King) to *Christopher Tankard*, Esq; one of the Jurors, That he had disparag'd the Evidence of the Popish Plot, and gave his Dogs the Names of *Otes* and *Bedloe*, the King's Witnesses.

At the Assizes held for the County of *York*, the 18th of *July*, 1681, Sir *Miles Stapleton* was again brought to the Bar, and after several Challenges, as well on the Part of the King as of the Prisoner, a Jury was sworn: And Sir *Thomas Stringer* having open'd the Indictment and the Evidence, the King's Witnesses were call'd, and first,

Mr. *John Smith* was sworn.

Page 795. Page 739.

Mr. J. *Dolben*. Mr. *Smith*, pray tell the Court what you know of the Plot.

Smith's Evidence of the Plot in general.

Smith. Then I must relate what happen'd to me beyond Sea. —— When I first went to *Paris*, Abbot *Montague* and Mr. *Car* told me, they had great Friends about the *English* Court, that many Jesuits were lately sent into *England*, and that I shou'd have great Preferment if I wou'd turn to the Romish Religion; after some Stay there, I went for *Rome*, where the Fathers *Anderton*, *Southwel*, and *Campion*, introduc'd me to Cardinal *Grimaldi*, who told me there was great Likelihood of establishing the Romish Religion in *England*, and offer'd me Preferment if I wou'd turn to it; and he, at length, perverted me, and finding I was willing to study, sent me to an *Italian* College, where I came acquainted with all the secular Priests, *English*, *Scotch*, and *French*, who told me what Interest had

been made in *England* by Cardinal *Norfolk*'s coming in, and that there was but one Man in the Way, and that they had Men ready who wou'd ſoon remove him.

Mr. J. *Dolben.* Did they mean the King?

Smith. Yes, my Lord; I left the *Italian* and went to the *Engliſh* College, and there the Rector and Father *Mondford* told me, they did not doubt but by this Cardinal *Norfolk*'s Means to take off the King: And I had Emiſſary Letters when I came away, and Cardinal *Perorin* introduc'd me to kiſs the Pope's Toe, and I had his Bleſſing and particular Indulgence; and the Cardinal told me there was one Man who had promis'd 'em fair but perform'd nothing, that he muſt be taken off, and I might be inſtrumental. At my coming to *London* I apply'd my ſelf to the Arch Prieſt *Purrat*, and the Proclamation for apprehending Prieſts coming out, I reſided with *Purrat* at the Ambaſſador's, and ſeveral Clergy there ſaid they doubted not but Popery wou'd ſoon be ſettled in *England.*

Mr. J. *Dolben.* Do you know of any Conſpiracy in *Yorkſhire?*

Smith. My Lord, after I left the Ambaſſador's I came to live at Mr. *Jennifon*'s, where Mr. *Thwyng* (lately executed) and and other Prieſts that met there, were of Opinion the King wou'd be taken off unleſs he brought in Popery; and they deſir'd me to perſwade Mr. *Jennifon* to ſend his Daughters to *Dolebanck* Nunnery, but I (knowing the Deſign) refus'd it, and Mr. *Thwyng* aſking me how they gave Money in the Biſhoprick,

Page 796.
Page 740.

I told him ſome gave more and ſome leſs, and I enquir'd how it was rais'd in *Yorkſhire*, and he ſaid, ſome gave freely, but that his Uncle and his Friends were bent another Way, being going to make a Foundation for *Dolebanck*, and that Sir *Miles* was very zealous and contributed largely.

Mr. J. *Dolben.* What were thoſe Collections for?

Smith. We underſtood my Lord that 'twas for killing the King and extirpating the Proteſtant Religion,

Religion, but pretended 'twas for repairing a College at *Doway*.

Mr. *Robert Bolron* was call'd and ſworn.

Sir *Thomas Stringer*. Acquaint my Lords and the Jury what you know of Sir *Miles Stapleton*.

Bolron. I went to live with Sir *Thomas Gaſcoign* in 74, and was there perſwaded to turn Roman Catholick, and being aſk'd, about 76, what I wou'd do for the Romiſh Religion, and anſwering I wou'd venture my Life in the Cauſe, Father *Ruſhton* gave me the Oath of Secrecy, and about *Whitſontide*, 77, Sir *Miles Stapleton*, Sir *Thomas Gaſcoigne*, 'Squire *Gaſcoigne*, my Lady *Tempeſt*, Mr. *Inglesby*, Mr. *Thwyng*, *Ruſhton*, and others, held a Conſult at *Barnlow-Hall* about killing the King and eſtabliſhing a Nunnery: Sir *Thomas* gave 90 *l. per Annum* and 300 *l.* for killing the King, and Sir *Miles* ſaid he wou'd give 200 *l.* for killing the King; and they ſaid, if the Duke of *York* did not pleaſe they wou'd ſerve him like his Brother; and they ſaid they wou'd get the Duke's Conſent for Sir *Miles* to be a Privy Counſellor. The 13th of *June*, 78, 'twas agreed at another Conſult to ſecure *Hull*, as a fit Place for the *French* to land at. *Bolron's* Evidence againſt Sir *Miles*.

Lawrence Mowbray was call'd and ſworn.

Sir *Thomas Stringer*. Tell the Court what you know againſt Sir *Miles Stapleton*.

Mowbray. Sir *Miles* was preſent with Sir *Thomas* and 'Squire *Gaſcoigne*, my Lady *Tempeſt*, and others, in 76, when *Ruſhon* gave them the Oath of Secrecy, and they diſcours'd about killing the King, ſubverting the Government, bringing in Popery, and the firing of *London*, and Sir *Miles* ſaid he'd venture his Life and Fortune for killing the King; and I had an Indulgence for Time paſt, being to enter into the Roſary. *Mowbray's* Evidence. Page 783. Page 727.

Mr. J. *Dolben*. Mr. *Bolron*, you ſay you ſaw a colluſive Conveyance made by Sir *Miles Stapleton* to Sir *John Dancy*?

Bolron. I did, my Lord, in 75, and told Sir *John Dancy* of it at Sir *Thomas Yarborough's*.

Mr. *Bayns*

Mr. *Bayns* was call'd and ſworn.

Sir *Thomas Stringer.* Come, Mr. *Bayns*, declare to the Court what you know againſt Sir *Miles.*

Bayns. I only know that he came often to *Barnlow-Hall*, in 76 and 77, to Sir *Thomas* and my Lady *Tempeſt*, but don't know what 'twas about, they once talk'd of Nuns beyond Sea, that were galloping Nuns.

Sir *Miles.* Mr. *Bolron*, did you accuſe me to Mr. *Lowder*, or did I deſire you to be ſecret for me?

Bolron. I did not accuſe you to him; and tho' you did not deſire my Secrecy *Ruſhton* did.

Sir *Miles.* How long did the Conſult laſt?

Bolron. Six or ſeven Hours; 'twas held in the old dining Room.

Sir *Miles.* Pray, on what Occaſion was you turn'd out of Sir *Thomas Gaſcoigne*'s Service?

Bolron. I know not; they ſay 'twas about a Trunk, and they wou'd have hang'd *Mowbray* about a Ring that my Lady *Tempeſt* accus'd him with, when I can prove where he bought it.

Sir *Miles.* Mr. *Mowbray*, when did you firſt become a Proteſtant?

Mowbray. In 79, when I gave in my firſt Information.

Sir *Miles.* I deſire to know if he ſaw a Liſt of Names?

Mowbray. Yes, 'twas a Liſt of the Actors and Contributors for killing the King, and your Name was there.

Sir *Miles.* Did I, or any other, deſire you to keep any Secret for me?

Mowbray. Yes, Father *Ruſhton* did; but you did not.

Page 798. Page 742. Mr. J. *Dolben.* Well, call your Witneſſes.

Mr. *Lowder* was call'd and examin'd.

Sir *Miles* calls his Witneſſes. Sir *Miles.* I deſire Mr. *Lowder* will acquaint the Court whether *Bolron* accus'd me in his Information?

Mr. *Lowder.* About the 24th of *January*, 79, *Robert Bolron* came and told me he had High Treaſon to impart to me againſt Sir *Thomas Gaſcoigne* and others I order'd my Clerk to bring

a Bible, and Pen, Ink, and Paper, to take his Information, desiring him to be cautious, for that several Lives were at Stake, and bid him seriously consider what he had to say; and he telling me that he had deliver'd it in Writing to Mr. *Tindal*, I said, Mr. *Tindal* will be at my House the 25th, we'll then take it together; accordingly *Bolron* came and gave his Information to us, and charg'd only *Rushton* and Sir *Thomas Gascoigne*, but said he shou'd recollect more; and I bid him, when he had done it, come again; when he came again, he said, he wou'd not trouble us, he wou'd go and inform the Council, which he did, for I have a Copy of the Order under several of the Council's Hands; after this he goes again to *London* and brings me another Order of Council to examine *Mowbray* and *Hickeringil*; and I asking him if he knew any Thing concerning Sir *Miles Stapleton*, he said, No, he believ'd he was very clear, but told me, *Mowbray* cou'd say he saw Sir *Miles* at the Consult, and that others wou'd come against Sir *Miles*, and that *Mowbray* wou'd swear to the Conspiracy of killing the King, *&c.* this was two or three Days before the Examination.

Bolron. My Lord, I knew not what he had to say; Mr. *Mowbray* will affirm he was there at that Time. Page 799. Page 743.

Mr. J. *Dolben.* *Mowbray*, did you tell *Bolron* what you had to say before you came to Mr. *Lowder*'s?

Mowbray. 'Tis possible I might tell him somewhat, but not the Particulars.

Mr. *Lowder.* My Lord, I am positive to what I say, if I be brought to my Oath.

Sir *Thomas Yarborough* was call'd.

Sir *Miles.* I desire Sir *Thomas* will declare what *Bolron* said of the Plot after Sir *Thomas Gascoigne* was taken?

Sir. *Thomas Yarborough.* The 10th of *August*, 79, about Eleven at Night, *Bolron* came to speak with me, and I order'd my Servant to bring him into my Chamber, he told me he had an Order of Council to search all suspicious Places for Priests, and he believ'd *Rushton* was at Sir

Miles

Miles Stapleton's, and seeing his Name in the Order, I ask'd if 'twas he that inform'd against Sir *Thomas Gascoigne*, and he shew'd me the Article against Sir *Thomas*: I then ask'd him if he knew any thing against Sir *Miles Stapleton*, he answer'd, [no, I protest, I know he has made a collusive Conveyance of his Estate, as most Catholicks have to secure them, but I believe he is Innocent and not any Way concern'd.]

The Lady *Yarborough* was call'd.

She depos'd, That she was in Bed, and heard the Discourse betwixt her Husband and *Bolron*, and that 'twas to the same Effect Sir *Thomas* had declar'd, and added, that in the following Afternoon Mr. *Anby* ask'd *Bolron*, in Sir *Thomas*'s Porch, if Sir *Miles* was in the Plot, and that *Bolron* said, he had nothing against Sir *Miles*, he was an honest Gentleman for ought he knew, excepting that he had made a collusive Conveyance of his Estate.

Page 800.
Page 744.

Mr. *Normanton* was call'd.

He depos'd, That *Bolron* told him Sir *Miles* kept Priests in his House, and that he wou'd apprehend them presently, for that he might have 20*l.* a Piece for taking of them.

Richard Peers, Sir *Miles*'s Man, was call'd and examin'd.

He depos'd, That three or four Days after Sir *Miles* was taken, *Bolron* ask'd him if they did not blame him for accusing Sir *Miles*, and the Deponent answering he did not hear him nam'd, *Bolron* reply'd, that 'twas not him, but he might not tell who 'twas.

Stephen Thompson was call'd.

Thompson depos'd, That he was bound to Sir *Thomas Gascoigne*, with *Bolron*, for the Payment of 28*l.* and 30*l.* and that *Bolron* said there was 28*l.* good Debts, and he'd take Care to get the other, but said also, if Sir *Thomas* be not kind he [*Bolron*] wou'd do him an ill Turn; and farther depos'd, That before the Plot broke out *Bolron* said there was never a Catholick in *Yorkshire* concern'd in it.

The

The Lady *Vavaſour* was call'd and examin'd.

She depos'd, That ſhe believ'd her Huſband was not at Sir *Thomas Gaſcoigne*'s any Part of that Year the ſaid Conſult was, becauſe he was infirm at *York*.

Mr. *Legget* was call'd.

Sir *Miles*. Pray, what Money wou'd Mr. *Bolron* have given you when I was taken?

Legget. My Lord, I was preſent at the *George* at *York*, when *Bolron* read his Information againſt Sir *Thomas Gaſcoigne*, and aſk'd *Mowbray* if he knew any Thing of it, and *Mowbray* ſaid he did not.

Mr. J. *Dolben*. What's that to the Purpoſe, did he ſay any Thing againſt Sir *Miles*?

Legget. I have heard *Bolron* ſay he knew nothing againſt Sir *Miles*, only that he had made over his Eſtate to Sir *John Dancy*, but after *Bolron* and *Mowbray* had been out together, *Bolron* ſaid Sir *Miles* was to be taken into Cuſtody, and told me, if I did it he'd go half Snips with me, and at laſt ſaid, if he got 100 *l.* of Sir *Miles*, I ſhou'd have 20 *l.* of it.

Mrs. *Elizabeth Holmes* was call'd.

She depos'd, That juſt before Sir *Thomas Gaſcoigne*'s Tryal Mrs. *Bolron* ſaid ſhe believ'd Sir *Thomas* was innocent of the Plot, and that ſhe had nothing to ſay againſt him, as God ſhou'd judge her Soul; and farther, that Mr. *Bolron* told her, after he came from *York*, that he underſtood the Deponent was to be a Witneſs againſt him, but that if ſhe'd be kind to him he'd be kind to her, and ſpeak favourably, and that if he had known he ſhou'd have been no better rewarded, the Devil ſhou'd have been a Witneſs for him, and that he threatned to puniſh the Deponent unleſs ſhe wou'd unſay what ſhe ſaid at my Lady *Tempeſt*'s Tryal.

Sir *Miles*. When did you laſt ſee me, *Bolron*?

Bolron. In 78. I have ſeen you at *Barnlow-Hall*, but I never ſaw you ſince the Plot broke out.

Sir *Miles*. He ſwore at Sir *Thomas Gaſcoigne*'s Tryal, that Sir *Thomas* and I diſcours'd about

Otes

Otes and *Bedloe*; and I can prove we were never together ſince the Plot broke out.

Mr. J. *Dolben*. He muſt be an excellent Witneſs will ſwear that: Have you any more Witneſſes.

Edward Cooper was call'd.

Cooper depos'd, That being intimate with *Mowbray*, he aſk'd him, if what *Bolron* had ſworn againſt Sir *Tho. Gaſcoigne* was true? and that *Mowbray* ſaid, he might as well have ſworn it againſt any one elſe; for that he being in the Houſe, muſt know as well as *Bolron*, and he knew nothing of it.

Madam *Sherbourne* was call'd.

She depos'd, That *Bolron* and *Mowbray*, under Pretence of ſearching for Prieſts, took ſeveral Pieces of Silver from her Houſe.

Mr. J. *Dolben*. We know they have been very bad Men. Well, have you any more Witneſſes?

Sir *Miles*. I can produce my Neighbours of the Church of *England* to my Character and Reputation.

Page 802. Page 746.

Sir *Tho. Stringer*. We allow, Sir *Miles* hath been a very good Man, 'till he fell into this great Action; but I deſire *Dixon* and *Wilſon* may be ſworn and examin'd, if they were hir'd at Sir *Tho. Gaſcoigne*'s Tryal.

Dixon call'd and ſworn.

Dixon depos'd, That *John Bailey* offer'd him 40*s.* to be a Witneſs for Sir *Tho. Gaſcoigne*.

Wilſon call'd and ſworn.

Sir *Tho. Stringer*. Were you offer'd any Thing by Mr. *Babbington* to be a Witneſs for Sir *Miles*?

Wilſon. I was my Lord.

Then *Dixon* depos'd farther, That *Batley* wou'd have had *Wilſon* teſtify'd that he never ſaw *Bolron* nor *Mowbray* at his Houſe, and that he preſs'd the ſame on him, ſaying, 'twas but a Lye.

Wilſon. He wou'd have given me 10*l.* and *Hickeringill* offer'd me 10*l.*

Chriſtopher Langley and *Richard Cocker* call'd and ſworn.

Sir *Tho. Stringer*. Tell what hath been offer'd you to give Evidence for Sir *Miles*.

Langley. *William Batley* and *John Roſs* told me, if I wou'd teſtify for Sir *Miles* what they directed, I ſhou'd have a Couple of *Oxen* and half a Score Sheep.

Cocker teſtify'd, That he was preſent, and heard the ſame Offer made.

Mr. *Bayns* call'd, and ſworn again.

Sir *Tho. Stringer.* Speak, whether Mrs. *Holmes* wou'd have had you recanted any Thing againſt Sir *Miles.*

Bayns. She offer'd me (if I had any Thing againſt Sir *Miles*) 60 *l. per Ann.* to hold my Tongue; and Mrs. *Hewit* told me, ſhe wou'd give me more, if I wou'd ſay nothing; and they ſaid they knew Sir *Miles* wou'd ſtand to it.

I deſire the Jury will conſider what little Credit has been given to the Witneſſes who have been produc'd againſt me at former Tryals: I ſpeak ſeriouſly, I never was at any Conſult about theſe Things, and I believe none that know me will believe it: I never thought Ill of the King in my Life. What Reaſon was there for it? Page 747.

Mr. J. *Dolben.* No Reaſon at all, but the mad fiery Zeal of the Jeſuits; for ever ſince the Reformation, you have enjoy'd your Eſtates and Religion without Moleſtation, but you cannot endure we ſhou'd quietly enjoy ours.

Then Mr. J. *Dolben* proceeded to direct the Jury: He told them, that as to what Mr. *Smith* had heard in *France*, or at *Rome*, of the General Deſign, or what he had from *Thwyng* or others, in relation to Sir *Miles*, was no Evidence againſt him; but as to *Mowbray* and *Bolron*, they had both ſworn the Treaſon poſitively againſt Sir *Miles Stapleton*; and tho' Sir *Miles* had produc'd ſome Witneſſes to impeach their Credit, he had not produc'd any Record of Conviction againſt them, and therefore they ſtill remain legal Witneſſes. Mr. J. *Dolben* directs the Jury.

Mr. Bar. *Gregory* added, That there were full Evidence againſt the Priſoner; and he thought there were no material Witneſſes produc'd againſt thoſe who had ſworn the Treaſon: That as to their concealing their Knowledge of Sir *Miles*'s being in the Plot, that was before they became Pro- As does Mr. Bar. *Gregory.*

Proteſtants; and beſides, in Diſcourſe, a Man was not bound to tell his Neighbour all he knew: As to what they ſaid afterwards before the Juſtices of Peace, it was poſſible they might forget Sir *Miles* was concern'd at that Time, they were not upon Oath; and they did not come before them as Magiſtates, when thoſe Queſtions were aſk'd them.

Sir *M. Stapleton* is acquitted.

The Jury then withdrew; and, within half an Hour, brought in their Verdict, that the Priſoner was *Not Guilty*.

Page 804. Page 748.

The TRYAL *of* GEORGE BUSBY *for High Treaſon, in accepting Popiſh Orders, at the Aſſizes for the County of* Derby, 25 July, 33 Car. 2.

He is arraign'd. Says he has a *Habeas Corpus* to remove him to the King's Bench; but the Grand Jury having found the Bill, is told he muſt be try'd here

THE Priſoner being arraign'd, ſaid, He had procur'd a *Habeas Corpus* to be remov'd to the King's Bench; but that the Under-Sheriff dying, he had not had the Benefit of it, and deſir'd he might be try'd in *London*; but the Court acquainted him, The Grand-Jury having found the Bill, he muſt be try'd in the County.

The Indictment

The Indictment ſets forth, that *George Busby*, of *Weſt-Hallum*, in the County of *Derby*, Clerk, being born within the King's Dominions, was, after the firſt Year of Queen *Elizabeth*, and before the 16th of *March*, in the 33d of this King, ordain'd a Prieſt by an Authority deriv'd from the See of *Rome*: And that he did, on the ſaid 16th Day of *March*, in the 33d Year of the King, traitorouſly reſide and remain at the Pariſh of *Weſt-Hallum* aforeſaid, being within the Kingdom of *England*, contrary to the Statute in that Caſe made and provided, and againſt the King's Peace, &c.

The King's Counſel open the Indictment and the Evidence.

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To which Indictment the Priſoner pleaded *Not Guilty*, and a Jury was ſworn; after which Mr. *Bridges* open'd the Indictment: And Mr. *Coomber* open'd the Evidence, and took Occaſion to tell the Jury, that the Priſoner was alſo concern'd in

the

the Popish-Plot; that the Priests were always promoting such Plots; and that it was better to convict one Priest, than many Felons.

Then the Witnesses for the King were call'd: And first,

Mr. *Gilbert* was sworn.

Mr. *Coombes*. Pray tell my Lord and the Jury, what you know concerning the Prisoner at the Bar?

Mr. *Gilbert*. My Lord, About *November* 78, I receiv'd a Letter from Sir *Simon Degg*, which occasion'd my sending a Warrant to the Constable of *West Hallam*, to apprehend the Prisoner, who was at that Time reported to be a Jesuit, and to be concern'd in the Plot; but he cou'dn't then be found. In *January* following, I attended Mr. *Gray*, who, by Order of Council, search'd Mr. *Powtrell*'s House, to whom the Prisoner has been Priest for six or seven Years; and tho' 'twas reported that he was fled, I heard afterwards, that he was then in the House. About two Years ago I receiv'd a Warrant from the Lords of the Council, importing, That *George Busby* was a Priest and Jesuit, and a Conspirator against the Life of his Majesty, *&c.* and requiring me to apprehend the said *George Busby*, and convey him to the County Gaol, *&c.* and accordingly I sent to Mr. *Ragnall*, the Under-Sheriff, to come to me the 23d of *March* 78, at *West-Hallam*, on extraordinary Business from the Lords of the Council, which I wou'd communicate at our Meeting: And we search'd again, but to no Purpose, tho' I was afterwards inform'd he was in the House at that Time.

Page 807. Page 751.

About *August* 79, Mr. *Powtrell* obtain'd a License to travel; and 'twas credibly reported that *Busby* was gone over Sea too, which made me dissuade Sir *W. Waller*, (who came in *January* 79, to search for Priests) and divert him from *Hallam* to another Place; tho' I've been since inform'd, that *Busby* has not been out of *England* since the Discovery of the Plot.

About *Christmas* last, I had Notice that he was walking last Harvest with the Widow *Smally* in Mr. *Powtrell*'s Gardens; and the 1st of *March* last,

I went thither to buy Wood for my Coal-Pits, and (with five or six that I took with me, and the Constable, whom I sent for) search'd the House, but cou'd not find him; and Mrs. *Smally* affirm'd he was in *Flanders*, tho' I was afterwards told, he was walking with her in the Garden when I went first to the House; but I found in *Busby*'s Chamber a Crimson Damask Stole and Maniple, an Altar-Stone, Surplice, Box of Wafers, Mass-Books, and divers other Popish Things, pack'd up in a Crimson Sattin Vestment; and a String being fix'd in the Book betwixt *Festa Februarii* and *Festa Martii*, I told them, 'twas apparent the Book had been lately used, and by that imagin'd a Priest was in the House; but they deny'd any had been there in two Years; so I took away the Things, and asking Mr. Justice *Charlton*, at the last Assizes, what I must do with them? he said, They must be burn'd according to Law; but I (imagining 'twou'd make the Priest more easily apprehended) sent them again to *Hallam*; and two or three Days after, I again went (with some Company to assist me) about Eleven a-Clock at Night, and because (on my acquainting them with my Business) they did not let me in, I order'd the Constable to break open the Door; and tho' I found the Priest's Bed warm, and Fire newly extinguish'd, yet they affirm'd no one had lain there; and after we had search'd 'till Ten the next Morning, and cou'd not find him, the Widow *Smally*, and the rest of the Family, ridicul'd and jeer'd us; on which I made a fresh Search, and order'd some to climb on the Lofts; and, with much Application, and sounding on the Lofts and Cielings, we perceiv'd a false Floor, near a Stack of three Chimneys cover'd with Tiles and Roofing, which I order'd to be broke; which being done, and a Door pull'd open, they found the Prisoner, whom I apprehended; and, after I had allow'd him some Time for Refreshment, I convey'd him to *Derby*, took his Examination, and committed him to *Derby* Gaol. A little after, I sent my Lord *Conway* an Account of his Apprehension and Commitment, with a Copy of his

Page 808.
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his Examination, who return'd me an Anſwer, that he had acquainted his Majeſty thereof, who approv'd of what I had done.

Busby. My Lord, I am an Alien, born at *Bruſſels.* I have an Affidavit made from the Regiſter of *Caddington*, where my Father liv'd, of what Children he had before he went beyond Sea; but I have not had Time to procure a Certificate where I was born: My Father left *England* about the Beginning of the Troubles, and I am about 40 Years of Age.

Then the Act for Naturalizing thoſe that were born beyond Sea during the Rebellion, was read.

Joſeph Dudley was ſworn.

Bar. *Street.* Do you know the Priſoner at the Bar?

Dudley. I have known him entertain'd by Mr. *Powtrell* (to whom I was a Servant) for above ſix Years, where I have heard him ſay Maſs, Preach and Pray, and have ſeen him Chriſten and Catechize like a Pariſh Prieſt, but with more Secrecy; and I (tho' not of their Opinion) was intruſted to keep the Doors.

Bar. *Street.* What do you know of Mr. *Busby*'s being an Alien?

Dudley. My Lord, I have heard him in Diſcourſe, with my Maſter and others, of the late Wars, ſay, that their Houſe was often plunder'd, and that the firſt Time the Soldiers came, he hid himſelf behind the Curtains, being then about two Years old; and that after they were gone, his Mother, and others of the Family, lamenting his Loſs, and thinking the Soldiers had taken or made him away, he appear'd, and was receiv'd with great Joy.

Page 810. Page 754.

Busby. When and with whom did you hear me uſe ſuch Diſcourſe? You ſpeak it by Hearſay, I ſuppoſe.

Dudley. With my Maſter and others ſeveral Times, when they have been talking of the Oppreſſions of thoſe Times; and you ſaid, the Sufferings of your Family oblig'd them to leave their Houſe; and, my Lord, he ſaid, that when he was about five Years old, he remember'd, that Soldiers coming again to plunder, he hid himſelf in the

Garden Hedge; and late in the Evening, when the Family thought they had loſt him, he appear'd, to their no ſmall Joy; and that preſently after this, they went with him beyond Sea, where his Mother had ſeveral Children; and I have heard her talk of her being at *Bruſſels*.

Bar. *Street*. Mr. *Busby*, he ſays he had it from your own Mouth, and not from other People; but, Mr. *Dudley*, What can you ſay as to his being a Prieſt or a Jeſuit?

Dudley. My Lord, Not only my Maſter, the Family, and other Papiſts, have own'd him to be a Jeſuit, and told me ſo; but he himſelf has told it me, particularly once, when I ſhou'd have been his Convert.

Busby. Pray where and when was it that I told you I was a Jeſuit?

Dudley. In *Weſt Hallam* Gardens, when my Maſter and Mrs. *Smalley* ſent me to you; you firſt talk'd of the Gardens, and then deſcrib'd the Jeſuits College at *Liege*, where I think you ſaid you receiv'd Orders: Beſides, my Maſter, Mrs. *Smalley*, Mrs. *Attwood*, and *George Harriſon*, have ſaid it; and yourſelf ſaid, that my Lord *Aſton*'s Prieſt, Mr. *Ewers*, was your Tutor when you were (I think) at St. *Omers*.

Busby. How long have you liv'd at *Weſt Hallam*, and what Year did I talk of *Liege* College-Gardens, and ſay I was a Jeſuit?

Dudley. I liv'd there betwixt ſix and ſeven Years; but I can't tell the exact Time you ſaid this; 'twas whilſt I liv'd there, and when you perſwaded me to be a Catholick.

Busby. You take a ſix Year's Compaſs; pray what were my Argument's, and tell me the Year and Time, and what induc'd me to ſay I was a Jeſuit?

Dudley. I have been an Hundred Times, alone, with you in the Gardens, and have ſo far condeſcended to your Perſwaſion, that I've been the more truſted by the Family ever ſince; but, my Lord, I dar'd not conſent, for fear of diſobliging my Friends; and, on my ſeeming Inclination, my Maſter promis'd to take me with him beyond Sea,

but

but afterwards order'd me to take Care of his Affairs at *Hallam*, and ſaid, he wou'd ſend for me before his Return; and there Mr. *Busby* has privately continu'd ever ſince.

Busby. Pray tell me what Day, Month, or Year, it was, I had this Diſcourſe with you, and how I came ſo familiar with you? Page 811. Page 755.

Bar. *Street.* 'Tis impoſſible to tell you the particular Time: Why do you aſk ſuch a fooliſh Queſtion?

Busby. How came you to know I was (as you pretend) a Jeſuit?

Dudley. 'Twas at the Head of the Orchard, where you endeavour'd to confirm me in your Opinion; ſaying, I ought to leave Friends and all Things elſe, to come to God, for Delays were dangerous; and, my Lord, as to his being a Jeſuit, he own'd it, when my Maſter was committed for refuſing the Oath; and ſaid, their Church wou'd not allow it, but did expreſsly forbid it; and no ſecular Prieſt cou'd give Leave to take them; but afterwards, on a Letter from Counſellor *Brent*, his Father-in-Law, that 'twas proper for my Maſter to do it, and that he cou'd not avoid it, Mr. *Busby* did not much oppoſe his taking the Oath of Allegiance; and that very Letter Mrs. *Smalley* ſhew'd me the ſame Night after Mr. *Busby* was taken, and then burnt it among other Papers.

Mr. *Gilbert.* For farther Confirmation, I muſt acquaint your Lordſhip, that he was Procurator for the Jeſuits, and receiv'd their Rents from 73 'till 77, and return'd ſeveral great Sums of Money, as may appear by Letters and his Accompt-Book, in which may be perceiv'd his Tranſactions with ſeveral Prieſts that have been executed, and others: I likewiſe ſearch'd for, and found divers Veſtments, and other Popiſh Trinkets, beſides thoſe before-mention'd, which I have ready to produce; and here's Mr. *Sheppey*, a Miniſter, who was a Popiſh Prieſt, will tell your Lordſhip the Names and Uſe of them.

Mr. *Sheppey.* My Lord, This is a Veſtment uſed when Maſs is ſaid, this is a Stole, and this a Maniple, *&c.*

Then *Thomas Houis* was call'd and ſworn.

Bar. *Street.* What can you ſay of the Priſoner, Friend: Look on him?

Houis. My Lord, I cou'd not have a Man's Daughter I had a Mind to, unleſs I turn'd Papiſt; and Mr. *Busby* converted me, and made me believe Matrimony was a Sacrament: He confeſs'd me, gave me Abſolution, made me do Penance, and afterwards marry'd me, for which I was cited into *Litchfield* Court: I have ſeveral Times heard him ſay Maſs, and I heard him preach three Times.

Page 812. Page 756.

Busby. You were perſwaded before you came to me, and declar'd you wou'd turn Catholick.

Houis. Mr. *Sherborn* perſwaded me, but your Sermons and Inſtructions convinc'd me.

Mr. *Gilbert.* This *Sherborn* was a great Papiſt, that carry'd Letters, and ſold them Books and Trinkets.

Busby. You don't underſtand Maſs; how can you ſwear I ſaid it?

Houis. You told me 'twas Maſs, and you doing the Prieſtly-Office in the Habit, I believ'd you.

Busby. How can he prove it to be Abſolution or Maſs, and not underſtand the Language?

Houis. My Lord, I have receiv'd the Sacrament from Mr. *Busby*, and he chriſten'd my Child at Dr. *Needham*'s of *Stanly-Grange*; and tho' they ſaid I (being Father) ought not to be preſent, yet I ſtood in a Corner of the Room, and ſaw it done; and Mr. *Waldron* was Godfather, and Mrs. *Smally* Godmother.

Elizabeth Evans was call'd and ſworn.

Bar. *Street.* Come, good Woman, what can you ſay of the Priſoner at the Bar?

Evans. I have heard him ſay Maſs in his Prieſtly Habit; and I, being Godmother to *Henry Avery*'s Child, ſaw him Chriſten it: I have ſeveral Times been Confeſs'd and Abſolv'd by him, and have receiv'd the Sacrament [being ſhewn a Box of Wafers] in juſt ſuch Things as theſe from him.

Dorothy Saunders was call'd and ſworn.

Bar. *Street.* Well, *Dorothy Saunders*, what ſay you?

Saunders. I have ſeen Mr. *Busby* in ſome of theſe Veſtments ſaying Maſs, and held up a Wafer thus; and he has Abſolv'd and given me the Sacrament; but I know nothing of his Chriſtening.

Sarah Clarke was call'd and ſworn.

Bar. *Street.* *Sarah Clarke*, have you heard Mr. *Busby* ſay Maſs?

Clarke. Yes, what he told us was Maſs; and he had Veſtments on, and elevated the Hoſt, and put a Wafer in our Mouths, which he ſaid was the Sacrament; and I have been Confeſs'd and Abſolv'd by him, and have heard he marry'd *Tho. Houis*, but am ſure he Chriſten'd his firſt Child, for I carry'd it to him.

Busby. How do you know it to be Maſs and Abſolution, when you don't underſtand the Language? Page 813. Page 757.

Clarke. You and others have told me the Meaning of what you ſaid; and all Papiſts were oblig'd to be there *Sundays* and Holy-days, to prevent a Venial Sin and incurring Penance.

Mr. *Gilbert.* My Lord, If the Indictment be not fully prov'd, we have more Witneſſes to produce.

Bar. *Street.* I believe the Jury will think it ſufficient Evidence. Mr. *Busby*, what can you ſay for yourſelf?

Busby. My Lord, It's impoſſible I ſhou'd remember the Story *Dudley* tells of hiding myſelf in the Curtains at two Years old, and my Mother went beyond Sea before *Edge-Hill-Fight*; and, as I have told your Lordſhip, I was born there. Neither cou'd *Houis* be cited into *Litchfield* Court, becauſe he was marry'd in a privileg'd Place; and both he and the other Witneſſes ſay, that the Maſs and Abſolution were in unknown Language, then how can they ſwear to what they don't underſtand? There are Mattins, Veſpers, and Even-Song, which they can't diſtinguiſh from Family Duty, which is often ſaid by Women in an unknown Tongue; ſo that this does not particularly prove my Prieſtly Office.

Bar. *Street.* You only offer ſome little Diverſions; you forget Chriſtening, Confeſſing, *&c.*

Busby. None of them know what they ſwear; giving Bread is not the Prieſtly Office; and thoſe Garments were taken from Churches in former Times, and kept in the Family as Antiquities, which I'll call Witneſſes to prove, are worn by Laymen as well as Prieſts. Call *Robert Needham.*

Needham depos'd, That he had ſaid his Prayers in thoſe Veſtments, and for that Reaſon thought his Prayers were the more acceptable.

Busby. To prove my being an Alien, I deſire *Charles Humphevill* may be call'd, [who was ſworn] and depos'd, That he had heard Mr. *Busby*'s Mother and Brother affirm, that the Priſoner was born at *Bruſſels*; and that he had ſearch'd the Regiſter at *Coddington*, and had the Affidavit of all Mr. *Busby*'s Children that were born there, and *George Busby*'s Name was not among them; and farther depos'd, That he had ſeen Canons who were not in Orders, and Children wear ſuch Veſtments beyond Sea.

Page 814. Page 758. Then Mr. *Mayo* was call'd, who likewiſe depos'd the ſame, as to the Regiſter of *Coddington.*

Busby. Mr. *Mayo*, Satisfy my Lord of the Diſappointment I had of my *Habeas Corpus.*

Mr. *Mayo.* My Lord, I obtain'd an *Habeas Corpus* for Mr. *Busby* laſt *Eaſter* Term, which, by ſome Remiſſneſs, became ineffectual: I procur'd another in *Trinity* Term, which was deliver'd to the Sheriff of *Derby*, who dying at *London* preſently after, render'd that invalid; ſo that Mr. *Busby* depending on his Removal to *London*, is not ſo well provided for Tryal as he otherwiſe might be.

Bar. *Street.* All this is to little Purpoſe: Come, Mr. *Busby*, what can you ſay more?

Then Mr. Bar. *Street* directed the Statute to be read, which makes it Treaſon to remain in *England* after having accepted Popiſh Orders, and proceeded to direct the Jury; and told them, That it having been ſufficiently prov'd that the Priſoner had exercis'd the Office of a Prieſt, there needed no other Proof of his being in Orders.

The priſoner is convicted, and Sentence paſs'd, but he is repriev-ed.

The Jury withdrawing, in a ſhort Time return'd, and brought the Priſoner in *Guilty*: And Mr. Bar. *Street* pronounc'd Sentence on him as a Traitor;

but

but told him, he was commanded by his Majesty to reprieve him.

The TRYAL *of* STEPHEN COLLEDGE, *(commonly call'd* The Protestant Joyner*) for High Treason at* Oxford, *by Virtue of a Special Commission of* Oyer *and* Terminer, *and Gaol-Delivery, the* 17*th of* August, 33 Car. 2. 1681.

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[Commissioners upon the Bench, the Lord *Norreys*, Lord Chief Justice *North*, Mr. J. *Jones*, Mr. J. *Raymond*, and Mr. J. *Levins*.

The Prisoner petitions the King that his Counsel might come to him in the Tower

Stephen Colledge, while he was Prisoner in the Tower, understanding that he was to be try'd at *Oxford*, petition'd his Majesty, that Mr. *Thomas Smith* and Mr. *Robert West*, might come to him, and that he might have Pen, Ink, and Paper, in order to prepare for his Defence.

Granted,

Whereupon an Order of Council was made, dated the 28th of *July*, 1681, That he shou'd have Pen, Ink, and Paper; and that Mr. *Smith* and Mr. *West* might converse with him as often as he pleas'd, in the Presence of the Warder.

A 2d Petition for a Copy of the Indictment, other Counsel, and a Copy of the Panel

The Prisoner afterwards preferr'd another Petition, desiring he might have a Copy of his Indictment, or the particular Charges in it; and that Mr. *Wallop*, Mr. *Smith*, Mr. *Thompson*, *Darnel*, *West*, *Holles*, *Rotheram*, *Lovell*, *Rowney*, *Pollexfen*, and Mr. *Ward*, might be assign'd him for Counsel, and Mr. *Aaron Smith* for his Solicitor; and that they might have Access to him; and that he might have a Copy of the Panel some Days before the Tryal.

Order'd that his Friends might come to him.

Whereupon an Order of Council was made, dated *August* the 11th, That the Friends and Relations of the said *Stephen College* shou'd have Access to him, and converse with him in the Tower without Interruption, their Names being first taken in Writing by the Lieutenant of the Tower.

On

The TRYAL of

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On *Wedneſday* the 17th of *Auguſt*, 1681, the Judges and Commiſſioners of *Oyer* and *Terminer*, and Gaol-Delivery, being met at the Court-Houſe in the City of *Oxford*, and the uſual Proclamations made, the Priſoner was brought to the Bar and arraign'd.

The Indictment, for compaſſing the Death of the King, the Subverſion of the Government, &c.

The Indictment ſets forth, 'That *Stephen Colledge*, 'late of *Oxford* in the County of *Oxford*, Carpenter, as a falſe Traitor, &c. not weighing the 'Duty of his Allegiance, but being mov'd and 'ſeduc'd by the Inſtigation of the Devil, &c. 'on the 10th Day of *March*, in the 33d Year 'of the King, did maliciouſly and traitorouſly purpoſe, compaſs, and immagine to incite 'a Rebellion, depoſe his Majeſty, and put him 'to Death, to alter and ſubvert the Government, and to levy War againſt the King within his Realms: And that in order to effect 'his ſaid traitorous Purpoſes and Immaginations 'he did, on the ſaid 10th Day of *March*, at *Oxford* aforeſaid, maliciouſly and traitorouſly prepare Arms, and did arm himſelf, and did adviſe and incite one *Edward Turbervile* and o-

Page 762.

'thers, the King's Subjects, to arm themſelves 'againſt the King, and gave out that it was 'purpoſely deſign'd to ſeize the King's Perſon, 'and that he, the ſaid *Stephen Colledge*, wou'd 'be one of them that ſhou'd ſeize him at *Oxford* aforeſaid: And that the better to accompliſh his ſaid traitorous Purpoſes, and promote Diſcord between the King and his Subjects, he did, at the Time and Place aforeſaid, in the Preſence and Hearing of many 'of the King's Subjects, maliciouſly and traitorouſly declare, *That nothing of Good was to be expected from the King; and that the King did mind 'nothing but Beaſtlineſs and the Deſtruction of his People, and that he did endeavour to eſtabliſh Arbitrary Government and Popery.* And this is laid 'to be done by the Priſoner, againſt the Duty 'of his Allegiance, the King's Peace, and againſt 'the Form of the Statutes in that Caſe made 'and provided.

It

It being demanded of the Prisoner whether he was guilty or not guilty, he said, he had been close Prisoner in the Tower, and ignorant of what he was charg'd with; and renew'd his Instances that he might have a Copy of the Indictment and of the Jury, and that Counsel might be assign'd him to advise with, whether he had not something in Law to plead in Bar to this Indictment; and he desir'd also to know upon what Statute he was indicted.

The Lord Chief Justice acquainted the Prisoner, that the Indictment concluding *contra formam Statut.* it took in all the Statutes relating to High Treason: That he could not, by Law, demand a Copy of the Indictment, unless some Point of Law arose which he must propound himself, and if the Court thought it fit to be argued, they wou'd assign him Counsel; That he cou'd not have a Copy of the Jury till he pleaded, because there was yet no Issue join'd whereon a Jury cou'd be impanell'd; and that they cou'd not tell what Notice he had of his Tryal; but if he was but just taken and brought to the Bar, he ought to answer the Charge, and plead presently.

The Prisoner himself must propound the Points of Law to be debated before he can demand Counsel.

The Prisoner cannot demand any Notice of Tryal.

The Prisoner then desir'd he might have his Papers that were taken from him, as he was brought from the Prison into Court; he said they were Papers that concern'd his Defence, some Instructions how he was to manage himself in his Defence, and if they wou'd let him have those Papers he wou'd not take up much of their Time; he desir'd but common Justice, he said, and what was his Right by Law.

The Prisoner's Papers taken from him.

The Chief Justice said, they wou'd do him Justice without any Partiality, and that the Bench were to be of Counsel for him, so far as to see that Things proceeded fairly on all Sides; and as to the Papers he mention'd, they wou'd examine them, and if they appear'd to be Papers necessary to his Defence upon his Tryal, he must have them restor'd; but he said he did not understand how he came by those Papers, for no Body cou'd solicit for a Man that was under an

Page 763.

Criminal for to solicit for one under a Prosecution of High Treason, unless assign'd by the Court.

an Accuſation of High Treaſon, unleſs he was aſſign'd ſo to do by the Court.

Col. Lord have Mercy upon that Man who is ſo accus'd then; for how is it poſſible he ſhou'd make his Defence, if he is not at Liberty to look to it himſelf, nor any of his Friends are permitted to do it for him: If I had thoſe Papers, I cou'd tell what to plead; but, my Lord, as I am a Freeman of *London*, I conceive, by the Charter of *London*, I am not impleadable out of the Liberties of that City in Pleas of the Crown.

L. C. J. If there be no Treaſon prov'd againſt you in *Oxfordſhire*, you will be acquitted; but a Freeman of *London* can have no Priviledge to commit Treaſon in *Oxfordſhire* but he muſt be try'd for it there.

Col. Lilburne and my Lord *Stafford* had Counſel aſſign'd them.

Mr. J. *Jones.* Not till they pleaded to the Indictment.

Col. Shall I have my Papers after I have pleaded?

L. C. J. The Court will not capitulate with you.

Col. My Papers tell me I have a Plea in Law to the Indictment, but what it is I can't exactly tell without them.

Where the Priſoner has a ſpecial Plea, and recites the Purport of it, the Court will aſſign him Counſel to put it into Form and argue it. Page 764.

L. C. J. You are not bound up to Forms, if you propoſe the Matter never ſo looſely, if it will avail you, yor ſhall have Counſel aſſign'd, and Time to draw it up in Form; but till you have propos'd the Matter, that the Court may know whether it be fit to be argu'd, we cannot aſſign you Counſel if we wou'd; it is not your particular Caſe, but the common Courſe of Juſtice.

Col. If I had my Papers I wou'd anſwer preſently; but I hope I ſhall not be murder'd, and deny'd what is neceſſary for my Defence: This Deſign is not only againſt me, but againſt all Proteſtants.

Where one ſtands mute in Treaſon, Sentence may paſs him as a Traitence will paſs againſt you. *Col.* I

L. C. J. If we record your Refuſal to plead, you will be adjudg'd to ſtand mute, and Sen-

Col. I will not forfeit the Priviledges the Law gives me if I can help it, you ſhall do what you pleaſe with me firſt; therefore, pray, my Lord, order me my Papers that were taken from me.

L. C. J. They were not taken from you by me.

Col. The Keeper took them from me, under Pretence of bringing them to your Lordſhip.

L. C. J. I don't know how you came by them: *Aaron Smith*, a common Solicitor, came to me laſt Night, and deſir'd to ſpeak with the Priſoner; but I told him I did not know how any one cou'd ſolicit or be of Counſel for a Man accus'd of High Treaſon, till he was aſſign'd by the Court; for a Defence in Treaſon ought to be by plain Matters of Proof and Fact, and not by artificial Cavils.

Col. Is it not my Right to have a Copy of the Jury?

L. C. J. That, you have had the Opinion of the Judges in: You have the Liberty of challenging thirty five peremptorily, and as many more as you will, ſhewing Cauſe for your Challenges; there are no particular Men deſign'd for the Jury that we know of, but when you have pleaded we will award the Sheriff to impanel a Jury.

Col. If the Law allows me the Liberty of challenging, it is with an Intention that I ſhou'd challenge thoſe Perſons that I think will not do me Juſtice; but as they are Strangers to me, and I have no Opportunity of enquiring after them, by my ſelf or others, I may challenge my Friends as well as my Foes.

Obj. To what Purpoſe does the Law allow Challenges if the Priſoner is depriv'd of all Opportunity of enquiring into the Characters of the Jurors.

L. C. J. I hope they will be neither Friends nor Foes; but there can be no Jury awarded till you have pleaded, and Iſſue is join'd.

Col. Pray, my Lord, order me my Papers, that I may ſee if I have any Right, or if I have any thing to plead or no; I don't know but the Indictment may mention ſomething of Miſdemeanor as well as Treaſon.

Page 765.

L. C. J.

Where the Indictment charges the Prisoner with Treason, he can't be found guilty of Misdemeanor.

L. C. J. If they prove no Treason against you, the Jury cannot find you guilty of Misdemeanor here, because you are charg'd with another Crime: In Misdemeanor the Proceedings are in another Manner; in that Offence you have no peremptory Challenges, but you may have Counsel, which is not allow'd to a Prisoner in High Treason.

Col. I don't know what to say without my Papers; I have neither done or spoke Treason; but this is a horrid Conspiracy to take away my Life; nor will it stop here, for it is design'd against all the Protestants in *England.*

L. C. J. You run out into extravagant Expressions: Who has any Design against your Life? You shall have Liberty to give Evidence of any Contrivance or Conspiracy against you on your Tryal; but the Question is now, If you are guilty or not guilty? And I see no Use your Papers can be to you as to the Plea.

Col. There may be Matter of Law that I might take Advantage of now, which it may be too late to insist upon when I have pleaded.

Mr. J. *Levins.* You are not deny'd any Priviledge of an *English* Man: When a Man is indicted for High Treason, he must plead either guilty or not guilty, unless he has Matter of Law to excuse him from that Plea, which he must propound to the Court, and then they will assign him Counsel: And if Matter of Law arises upon the Evidence at the Tryal, the Prisoner may demur to the Evidence, and pray Counsel of the Court to argue that Demurrer; but I think you must plead presently.

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Col. I do not know what are Matters of Law; if I had those Instructions that are in my Papers, I cou'd give a direct Answer presently.

L. C. J. You ought not to have Advice to decline your Tryal.

[Here the Prisoner renewing his Instances for a Copy of the Instictment, and it being again deny'd him, he desir'd it might be read to him again, and it was read to him twice.]

Col. If

Col. If I understand the Indictment, it says there was a Plot by me and others; now, ought they not to shew there was a Plot and Conspiracy, as was done in my Lord *Stafford*'s Case, before they go about to prove me guilty of it.

L. C. J. What Method the King's Counsel will proceed in after you have pleaded we can't tell; but you have not pleaded yet: Do not trifle any longer, 'tis a plain Matter, and requires a very short and plain Answer.

Col. Your Lordships are my Counsel as well as my Judges; I desire, therefore, if I have a Right to plead any other Matter, you wou'd declare it.

L. C. J. There does nothing appear to us.

Mr. J. *Jones.* The Court have all of them declar'd, they know of nothing in Law you have to plead.

Mr. Solicitor. You have heard the Opinion of the Court; you have a Right to propose any other Plea [besides *Not Guilty*] that you can your self; but you have no Right to ask Counsel till you have pleaded.

Mr. Serj. *Jefferies.* As for Mr. *Colledge*'s Solicitor, I wou'd put him in Mind of the Case of the Solicitor, who was indicted of High Treason for soliciting for one who was accus'd of Treason.

Page 768. A Solicitor indicted of High Treason for soliciting before he was assign'd.

Col. If you deny me my Counsel and Papers, you deprive me of the Means of coming at my Right, and render me incapable of making any Defence: This is the Man who took my Papers from me, [pointing to him] let him be commanded to return them; he said, he had Orders to take them from me, and bring them to your Lordship.

L. C. J. Your Papers are of no Use in Pleading Guilty or not Guilty?

Mr. Serj. *Jefferies.* Let him plead Guilty or not Guilty, or offer some Matter of Law to the Court fit to be debated, or we must desire your Lordship's Judgment.

Col. Pray, my Lord, order the Man to return me my Papers.

L. C. J.

L. C. J. Perhaps he was a Criminal that gave them to you firſt; but when you have pleaded, we will hear what you have to move about them.

Col. Poſſibly I may plead the Words were ſpoken in another Place.

L. C. J. If there be no Treaſon prov'd in *Oxfordſhire* you will be acquitted.

Col. My Lord, I am indicted by the Name of a Carpenter, but I am a Joiner.

L. C. J. I know no Difference between a Carpenter and Joiner in Law.

Mr. J. *Jones.* They might have indicted you by the Name of Labourer if they wou'd.

Clerk of the Crown. Are you Guilty, or not Guilty?

Col. Shall there be no Advantage taken againſt me, if I do plead ſo?

L. C. J. We ſhall make no Bargains with you?

Col. If you are my Counſel then, have I any Plea in Law to make?

L. C. J. We know of none, but Guilty or not Guilty.

Col. Then if you do force me upon this Plea, and it coſt me my Life, at your Doors let it be.

Clerk of the Crown. Are you Guilty, or not Guilty?

Page 768. *Colledge* pleads, Not Guilty.

Col. I am not Guilty, in Manner and Form, as it is laid in this Indictment.

L. C. J. Now he has pleaded, Mr. Attorney, if there be any thing in thoſe Papers neceſſary for his Defence, it will be hard to deny him them.

Mr. Attorney. When he came to Priſon he had no Papers; but I'm inform'd *Aaron Smith* deliver'd them to him.

Col. He receiv'd them from me in the Tower.

Mr. Attorney. What were the Papers you deliver'd him at the Tower?

Col. There are Directions how to govern my ſelf in my Defence, and Inſtructions to tell me what the Law allows me.

Mr. Attorney. My Lord, there are abundance of Niceties propos'd for him to move, and it will

will be ſtrange if Men ſhall be allow'd to eſpouſe the Cauſe of Traitors at this rate.

Col. I am no Traitor.

Mr. Attorney. You are indicted of High Treaſon.

Col. Ay, by a Grand Jury made up that Morning.

Mr. Attorney. My Lord, here is a Liſt of the Men return'd to ſerve on the Jury, with Marks ſet upon them, who are good Men, who bad, and who moderate Men; I hope he ſhall not have that Paper.

L. C. J. I wou'd have thoſe Papers put into ſome ſafe Hands, that they may not on the one Hand be carry'd away and ſtifled, and that the Priſoner, on the other Hand, may have Recourſe to ſuch of them as are proper for his Defence.

Mr. Attorney. But, my Lord, I underſtand that there are ſeveral People who go up and down to procure Witneſſes againſt the King's Evidence, making it a publick Cauſe; and here is a Liſt of the Witneſſes they have pick'd up.

L. C. J. He muſt have that; deliver it to him preſently.

Mr. Serj. *Jefferies.* Before the Priſoner makes Uſe of any Papers that have been brought him againſt the King's Witneſſes, we deſire to know what the Purport of them is, and who gave them to him.

L. C. J. Let us have no Heat till the Tryal is over, Brother, and then, if any Thing requires our Examination, it may be fit to conſider it; but in the mean while, what Hurt is there if the Papers be put into ſome truſty Hands, that the Priſoner may make the beſt Uſe of them he can.

Mr. Attorney. This is the ſame Thing as to aſſign him Counſel, if his buſy Solicitor ſhall procure the Advice of Counſel, and then communicate it to him.

Col. If you take away all my Helps, you may as well condemn me without a Tryal.

Mr. Attorney, you are not to have Helps to plead dilatory Pleas: My Lord, I pray you Lord-

ſhip's Judgment about the Papers when you have perus'd them.

Then the Judges look'd over a Paper call'd the Speech.

The Court peruſe the Papers that were taken from the Priſoner. Page 769.

L. C. J. We have ſeen enough of this to ſuppreſs it, and enquire how it came to his Hands.

Mr. Attorney. Here is another, reflecting on the Juſtice of the Nation: Call *Aaron Smith* and *Henry Starkey*.

Aaron Smith appear'd.

Mr. Attorney. Did you deliver theſe two Papers to the Priſoner?

Smith. No Body is to accuſe himſelf, I deſire Proof may be made of it.

L. C. J. We will not interrupt the Tryal; take a Recognizance of Mr. *Smith*, to be forth coming during this Seſſions.

Smith. I ſhall not depart, I hope Mr. Attorney will take my Word.

Mr. Attorney. Indeed I ſhan't; when I gave you Leave to go to the Priſon, I did not think you wou'd have abus'd my Kindneſs by giving the Priſoner Papers.

L. C. J. Well, take his Recognizance.

Aaron Smith inſults the Court, and is made to give Security to appear.

Smith. Tis high Time to have a Care, when our Lives, and Eſtates, and all, are beſet here.

L. C. J. What do you mean by that?

Smith. I did not mean any Reflection upon the Court; but I have been threatned ſince I came to Town, tho' I have not ſaid one Word in publick Company.

Mr. J. *Jones.* You reflect here in the Face of the Court and the Country, upon the Government and the Juſtice of the Nation.

Smith. No, my Lord, I have explain'd what I meant.

Col. Will you not let me have the Uſe of my Papers now you have perus'd them?

Page 770.

Mr. J. *Jones.* The Speech is a ſeditious Libel upon the Government; we don't think fit to let you have the Uſe of that Paper.

One accus'd of Treaſon may not receive any inſtructions from his Counſel, &c. either in Writing or otherwiſe.

L. C. J. That which contains the Names of the Witneſſes you have; and as for the Inſtructions in Point of Law, had they been written in your own Name, in the firſt Perſon, you might have

have had them; but when they appear to us to be wrote by another, and tell you, you must do so and so, this were to allow you Counsel in an indirect Way, which the Law does not give you directly; tho', for my Part, I had rather he shou'd have too much than too little.

Col. My Lord, Some of those Things I transcrib'd out of Books my self, and I don't know that Mr. *Smith* wrote one of them: I hope your Lordship will order me my Papers.

L. C. J. You shall have a Copy of the Paper of Instructions, leaving out what is scandalous.

[*The Court having taken a Recognizance of* 100 l. *of Mr* Smith, *and order'd Mr.* Starkey, *another of the Prisoner's Solicitors, to attend, for saying the Prisoner was hardly dealt with, in that his Counsel were not suffer'd to come at him, and offering the Jaylor four Guineas to do him what Favour he cou'd, They order'd the Paper of Instructions to be lodg'd in the Hands of the Sheriff's Son, for the Prisoner to peruse, and adjourn'd till the Afternoon.*

The Prisoner's Papers are lodg'd in the Hands of the Sheriff's Son, for the Prisoner to have Recourse to.

In the Afternoon, the Court being set, the Panel was call'd over, and the Prisoner having challeng'd several, at length the following Jury was sworn.

Henry Standard,	*Roger Browne,*
William Bigg,	*Timothy Doyley,*
Robert Bird,	*Ralph Wallis,*
John Shorter,	*John Benson,*
William Windlow,	*John Piercy,*
Charles Hobbs,	*John Lawrence.*

The Jury being charg'd with the Prisoner, Mr. *North* open'd the Indictment, and Mr. Attorney open'd the Evidence, but receiv'd some Interuption from the Prisoner, who complain'd he open'd some Things to prejudice the Jury against him, which cou'd not be prov'd. Page 771.

Then the King's Counsel proceeded to call their Witnesses, and first, Mr. *Dugdale*, who was a Witness against my Lord *Stafford*, and whom *Colledge* Page 772.

attested, at that Tryal, to be an honest good Man.

Mr. *Dugdale* was sworn.

The Witnesses examin'd apart.

The Prisoner desir'd the Witnesses might be examin'd apart, which was granted by the Court.

Dugdale's Evidence of some scurrilous Expressions the Prisoner had been guilty of towards his Majesty.

Then Mr. *Dugdale* depos'd, That he had been acquainted with the Prisoner about two Years, and that at some Times he seem'd mightily bent against Popery, and wou'd say, because the King did not prosecute Papists according to his Mind, *That the King was a Papist himself, and as deep in the Plot as any of them all, and that he had a Hand in Sir* E. Godfrey's *Death*; and that he told the Deponent at *Oxford*, *There was nothing to be expected from the King, but the introducing of Popery and arbitrary Government.*

Col. Where was this spoke?

Dugd. At *Combe*'s Coffee-House in this Town, and at the *Angel-Inn* here, in the Barber's Shop; we were in that Shop that Day the King went out of Town.

Witnesses not to be cross examin'd till they have gone through their Testimony.

L. C. J. You must not interrupt the King's Witness while he is giving his Evidence, but when he has deliver'd his Testimony you may ask him any Questions; and in the mean Time you may have Pen and Ink to help your Memory.

Dugd. Presently after the King went out of Town, we went into the Barber's Shop, which is just within the *Angel-Inn*, and as you were charging your Pistols, you said, *Rowley* is gone, the Rogue was afraid of himself and has shirk'd away'd.

Mr. Solicitor. Who did he mean by *Rowley*?

Page 773. *Dugdale*'s Evidence of the intend'd Rising at *Oxford*.

Dugd. It was his common Word for the King: And he has told me at other Times, there was no Trust to be put in the King; it was the People we must trust to, and we must look to arm our selves; and he said, he wou'd arm himself, and be here at *Oxford*; and he told me, in this Town accordingly, that he had several stout Men that wou'd stand by him in it: Their Intention was, he said, to root out Popery, by which he always meant the establish'd Church: And when Dr. *Tongue* was at his House, he said, he was forc'd

to

to be at great Charges and neglect his Business to keep him in Order, for if he had not, he said, the Rogue had a Mind to fling all upon the Protestants, that is, the Dissenters; for he did not count the Church of *England* so.

Mr. Attorney. Who were to be concern'd with him in that Design of his?

Dugd. He said he brought Captain *Chinton*, Captain *Browne*, and Dr. *Lewis* to Town with him, expecting there wou'd be a Rising: I think he told me this here, the *Friday* after the Parliament sate.

Mr. *Jones.* What Use did he say he wou'd make of them?

Dugd. For the Defence of the Protestant Religion against the King and all his Adherents.

Mr. *Jones.* What did he say, if the King did not yield to the Parliament?

Dugd. He said, if he did not yield to the Parliament, he shou'd be forc'd to it; I heard him say this at *Oxford.*

Mr. Serj. *Holloway.* Did you hear him say the same in *London?*

Dugd. Yes, he said he expected there wou'd be something done at *Oxford*, and he wou'd go thither with his Horse and Arms, and the Gentlemen I mention'd wou'd go with him: And he said, let them begin when they wou'd, he did not care how soon, his Party was the greatest Party.

Mr. Attorney. Did you know Captain *Brown?*

Dugd. Yes, he frequented the Prisoner's Company much, he was in the late Army against the King.

Mr. Serj. *Jefferies.* Did you see him have any Pistols?

Dugd. Yes, I saw him have Pistols in the House at *Oxford.*

Mr. Attorney. Do you know of his delivering any Marks or Signs for the People to be distinguish'd by?

Dugd. He gave me, at *London*, as much Ribbon as came to 40 *s.* with *No Popery*, *no Slavery*, wrought in it, to distribute among our Friends,

the Diſſenters, in the Country, that they might know one another.

Mr. *Jones.* Did you agree to come to *Oxford* with the Priſoner?

Dugd. Yes, I promis'd him to come, and did ſo: And being once at a Coffee-Houſe in *London* with Mr. *Colledge* and ſome Members of Parliament, a little before they met at *Oxford*, and talking of ſome Diſturbance that might happen here, it was agreed, that in every County where the Parliament had the beſt Intereſt a Member ſhou'd be left to manage the People.

Mr. Attorney. What do you know of any Pictures or Papers?

Page 774.

Dugd. I have about me *the Letter* pretended to be *interrupted to* Roger L'Eſtrange; I receiv'd it of the Priſoner, and he told me he was the Author of it, and he ſhew'd me it in MS. before it was printed, and told me he got *Curtis* and his Wife to print it, but wou'd truſt them no more, for they cheated him of the Gain.

L. C. J. What is it, Mr. Attorney?

Mr. Attorney. It is a Letter; and a great Part of *Fitz-Harris's* Libel is taken out of it. Did he diſperſe them?

Dugd. Yes, there were ſome given to Mr. *Boſon* and Mr. *Baldwin.*

Here the Paper was read.

Mr. Attorney. What other Libels did he deliver you?

Rary-ſhow explain'd.

Dugd. I receiv'd one like this, where all the Biſhops are changing their Hats for Cardinal's Caps: It is call'd *Rary-ſhow*; (*here he produc'd it*) I heard *Colledge* ſing it in *Oxford* Town, and at my Lord *Lovelace's*, in the Country, where Sir *Robert Clayton*, Sir *Thomas Player*, and Mr. *Rouſe*, were in Company.

Mr. Serj. *Jefferies.* How came you there?

Dugd. Sir *Thomas Player* invited me.

Mr. Serj. *Jefferies.* Where is it, in *Oxfordſhire*?

Dugd. I can't tell, 'tis four Miles from *Henley*, and my Lord was at Home then.

L. C. J. My Lord *Lovelace* is here himſelf, and hears what he ſays.

Mr. Serj.

Mr. Serj. *Jefferies.* Did he ſhew you this Cut?

Dugd. Yes, and he ſaid he made it, and ſung it before it was printed; and ſoon after it was printed he gave me one, and we ſung it together.

Mr. Attorney. How did he deſcribe it to you?

Dugd. The Figure with the Pack, he ſaid, was the King, and thoſe that follow'd him were *Topham*, *Cooper*, *Hughs*, and *Snow*.

Serj. *Hol.* What was meant by the Pack?

Dugd. The Parliament and all the King's Retinue. And then here is the King in the Mire again.

Mr. Serj. *Jefferies.* Yes, and here are the Biſhops whom they thruſt into the Pack when they have got him down in the Mire, and then they hoot them all away, as it is in the Song.

L. C. J. Did he explain it thus to you?

Dugd. Yes, he did, at *London*. They all were the King and the Clergy; and *Louſe-Hall*, he ſaid, was *White-Hall*, becauſe of its Poverty.

Here the Ballad was read.

Clerk of the Crown. *Rary-ſhow*, to the Tune of *I am a Senſeleſs Thing*.

Mr. Serj. *Jefferies.* What did he mean by the two Faces?

Dugd. That the King was half Proteſtant half Papiſt: And he ſaid the King's Party was but a ſmall Party to theirs, [*the Diſſenters.*]

L. C. J. Tell us the Words he ſaid.

Dugd. When he found the King wou'd not yield to the Demands of the Commons at *Oxford*, he ſaid, Let him begin as ſoon as he wou'd, he did not care, for their Party (meaning the King and his Party) was but a Handful to him and his Party, who, he ſaid, were the true Proteſtants; the others were but Proteſtants in Maſquerade; and hop'd I wou'd be true to his Side, and deſir'd me to get good Arms for my ſelf. Page 775.

Mr. Solicitor. For what Purpoſe did he deſire you to arm your ſelf?

Dugd. He ſaid, the King had a Deſign to introduce Popery and arbitrary Power; and he expected when they wou'd begin; and the ſooner the

the better, he wou'd be provided for them: He ſaid this both at *Oxford* and *London.*

Mr. *Jones.* Did he tell you Captain *Browne, &c.* were there?

Dugd. He told me at *London* they were *intended* to come down, and he told me at *Oxford* that the Captain and about forty were come down.

Mr. *Jones.* Was you in their Company here?

Dugd. I was with Captain *Brown,* Don *Lewes,* and ſeveral others of that Gang; I know their Faces tho' I don't know their Names.

Mr. Solicitor. To what Purpoſe were they to come?

Dugd. Colledge expected a Riſing at *Oxford,* and he was one who debated it at *Richards*'s Coffee-Houſe in *London,* whether it was not beſt to leave a Parliament Man in every County; and their Reſolution was to be carry'd from thence to the *King*'s *Head* Club: And, my Lord, the Day the Sheriffs were choſen, he ſhew'd me a Libel, and told me the Priſoner dare not print it, it was ſo dangerous; it was the worſt againſt the King and Government I ever heard.

Col. Pray, when did you firſt give this Evidence?

Dugd. I think in *June,* about the Time you was taken; I gave it before Sir *Lionel Jenkins.*

Col. Where did you ſwear theſe Things were done then?

Dugd. The ſame Words were ſaid in *London* that were ſpoke here. In this Evidence I have confin'd my ſelf chiefly to what was ſaid here, for there was more ſaid in *London* than here.

Page 776. *Col.* Did not you ſwear, at your Examination, that what you now ſay was ſpoken at *Oxford,* was ſpoken in *London?*

Dugd. I did not name *Oxford* then, and the Truth is, you ſpoke them both at *London* and here.

Col. What are you to have for giving this Evidence?

Dugd. I was never promis'd or receiv'd any Thing but the Charges the King allow'd me for my Journey into the Country.

Mr. Serj.

Mr. Serj. *Jefferies.* Have you any other Allowance than you had when you was Evidence againſt the Lord *Stafford?*

Dugd. No, nor I have not got all that yet.

Col. Pray, obſerve my Queſtion, Did not you ſwear I ſpoke theſe Words at *London*, which you ſwear now I ſpoke here?

L. C. J. He tells you what paſs'd both at *London* and *Oxford*; and I muſt inform you, that if Treaſon be committed in two Counties, the King may chooſe which County he will proſecute in, and give in Evidence the Facts in both Counties; indeed, if nothing was ſaid or done at *Oxford*, your Objection wou'd deſerve our Conſideration.

Where Treaſon is committed in two Counties, the Proſecution may be in either, and Facts in both given in Evidence at the Tryal.

Col. My Lord, in his Oath before Sir *Lionel Jenkins*, about the Deſign of ſeizing the King, and the Party I had, and the Arms I provided, he did ſwear, that I ſaid thoſe Words to him in *London*; but the Grand Jury there were ſo wiſe and honeſt as to do me Juſtice, and wou'd not find the Bill: So their Deſign failing there, they chang'd the Scene to *Oxford*.

The *London* Grand Jury refuſe to find the Bill againſt *Colledge*.

Dugd. He ſaid the ſame Things to me at my Lord *Lovelace*'s as we lay in Bed together.

Col. What did I ſay?

Dugd. That the King was a Papiſt, and deſign'd arbitrary Government. We had an Hour's Diſcourſe in the Morning as we lay a-Bed, about the Parliament and King.

Col. Where did I ſay the Words, in *Oxford*, and who was by?

Dugd. You ſaid them at *Combes*'s Coffee-Houſe when no Body was by; but at the *Angel-Inn* when you ſpoke them there were ſeveral; and I'm ſure there were many by at *London*, particularly Mr. *Starkey*, Mr. *Boſon*, and Mr. *Baldwin*, and we all rebuk'd you.

Col. What Arms did you ſee me have here in *Oxford?*

Dugd. You had a Caſe of Piſtols before you, and ſome Pocket Piſtols.

Col. I don't deny my having Piſtols in my Holſters; but as for Pocket Piſtols I had but one, and that was his own.

Mr. Serj.

Mr. Serj. *Jefferies.* A Chissel might have been as proper for a Joiner.

Col. You say I confederated with Captain *Browne, &c.*

Page 777.

Dugd. You told me *Browne* had a good Allowance, and you wou'd speak that he might have a better, for he was able to do good Service when the Time came.

Col. From whom was this Allowance?

Dugd. Among You: you know there were several Gatherings that I was privy to, tho' you did not tell me how it was to be distributed.

Col. Did I tell you there were any Gatherings for Captain *Brown?*

Mr. Serj. *Jefferies.* He says, you told him no Particulars.

Col. Pray, Sir *George,* don't interrupt me; I am for my Life.

Dugd. I don't say for him, or for whom, you distributed it; but you gather'd Money one among another, and you have paid Money.

Col. When, and to whom have I paid Money?

Mr. Attorney. You confess'd, at your Examination, you gave a Guinea.

Col. Were you in my Company at *Oxford* any where but at the Coffee-House and the *Angel-Inn?*

Dugd. I was with you at the *Chequer.*

Col. In what Room, was it above Stairs or below?

Dugd. I can't tell all the Rooms in that House, but it was both above Stairs and below. I was two Days with you there.

Col. Then it must be *Saturday, Sunday,* or *Monday*; for you were at *Oxford* but those three Days.

Dugd. Nay, I came to *Oxford* either *Wednesday* Night or *Thursday* Morning, and saw Mr. *Hunt* and you together the same Day I came.

Col. Did I explain any Pictures to you at *London,* or own I was the Author of them?

The Picture call'd *The Popish Successor* explain'd.

Dugd. Yes, upon my Oath. And there is one I have not shewn yet, (*viz.*) *A Character of a Popish Successor, &c.*

Serj. *Hol.* How did he explain that to you?

Dugd.

Dugd. These are a Parcel of *Tantivy* Men riding to *Rome*, and here's the Duke of *York*, half Man half Devil, trumpeting before them.

Col. You have got some Body to explain these Things to you.

Dugd. You did, upon my Oath.

Col. Oh fie! Mr. *Dugdale*, consider what you say.

Dugd. And in one Place, in the *Rary-show*, it was, in MS. *Now, now the Rogue is down*; but it is another Name in the Print.

Mr. Serj. *Jefferies.* It is, *Now, now the Giant is down*, here.

Col. Is the Song I sung at my Lord *Lovelace*'s the same with this?

Dugd. Generally it is, I can't say Word for Word; but you sung it half a dozen Times, and the Musick play'd to you.

Col. Was any Body by at my explaining these Pictures?

Dugd. Yes, Mr. *Baldwin*, and he reprov'd you for being so open.

Mr. Attorney. Did not *Colledge* endeavour to establish your Credit at my Lord *Stafford*'s Tryal?

Col. I acknowledge I was sworn at that Tryal, but what I said then was by Hearsay; I knew nothing of my own Knowledge of him, but I did believe him another Man than I find him.

Mr. Serj. *Jefferies.* No doubt of it, or you wou'd not have trusted him.

Mr. *Stevens* was sworn.

He depos'd, That, by Order of Council, he and Mr. *Atterbury* search'd the Prisoner's House, and found the Original of the *Rary-Show* in his Bed-Chamber, and also those that were printed. Page 778.

Atterbury was call'd.

He depos'd, They found the Original, drawn with a Pencil on *Dutch* Paper, on the Table in *Colledge*'s Chamber; but that they had lost it, and cou'd not produce it in Court.

Col. I am sure you cou'd not find the Original of any such Thing in my House.

Mr. *Sewell*

Mr. *Sewell* was ſworn.

He depos'd, That they found the Papers he produc'd in Court in a Bag, in the Poſſeſſion of *Colledges*'s Wife.

Mr. *John Smith* was ſworn.

John Smith's Evidence of the intended Inſurrection at *Oxford*.

He depos'd, That he was intimately acquainted with *Colledge*, the Priſoner; and that meeting him once at a Coffee-houſe by *Temple-bar*, *Colledge* told him he was invited to Dinner with Alderman *Wilcox*, and deſir'd the Deponent wou'd go with him; and ſaid, he wou'd be welcome: That as they were going, the Deponent aſk'd what the Alderman was? and *Colledge* ſaid, he was as true as Steel, and was a Man that wou'd endeavour to root out Popery: That the Deponent anſwering, That may eaſily be done, if you can prevail with the King to paſs the Bill againſt the Duke of *York*: *Colledge* reply'd, No, you are miſtaken, *Rowley* [The King] is as great a Papiſt as the Duke of *York*, and every Way as dangerous to the Proteſtant Intereſt, as is too apparent by his arbitrary Ruling: That when they came to the Place where they were to dine, the Alderman not being come, the Deponent aſk'd, What kind of Man he was? And *Colledge* ſaid, he was one that liv'd at his Country Houſe, and gave freely to ſeveral People to buy Arms and Ammunition, in order to bring the King to a Submiſſion to his People; *adding*, He wonder'd Old *Rowley* did not conſider how eaſily his Father's Head came to the Block, which he doubted not wou'd be the End of *Rowley* at the laſt: That after they had din'd, *Colledge* aſk'd the Deponent to go to his Houſe and ſee how he was provided with Arms; and that at another Time he dined with *Colledge*, who ſhew'd him his Piſtols, Blunderbuſs, and Great Sword, and his Armour, Back, Breaſt, and Head-Piece, and ſaid, Theſe are the Things which will deſtroy the pitiful Guards of *Rowley*, which are kept contrary to Law and Juſtice, to ſet up Arbitrary Power and Popery.

That a little before the Parliament met at *Oxford*, *Colledge* and the Deponent were diſcourſing what Preparations the City were making, and

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how

how they were provided with Powder and Bullets; and *Collegde* said, for his Part, he wou'd go down to *Oxford*, for he expected a little Sport there upon the Divisions that were like to be between the King and Parliament; and *Colledge* added, *We expect the King will seize on some of the Members, and we are as ready as he; and, for my Part, I will be there, and be one that shall seize him, if he secure any of the Members.*

College's Apprehentions that the King wou'd seize some of the Members at *Oxford*.

That after *Colledge* came up again, he told the Deponent he went down in Expectation of some Sport, but Old *Rowley* was afraid, like his Grandfather *Fany*, and so ran away like to beshit himself. And at another Time *Colledge* told him, that *Fitz-Gerald* and he had a Quarrel at the Door of the House of Lords at *Oxford*; and that *Fitz-Gerald* call'd him Rogue, and made his Nose bleed; but he said, before long, he hoped to see a great deal more Blood shed for the Cause: And when there was a Discourse of my Lord *Feversham*'s disarming the City, *Colledge* said, he was well provided; and if *Feversham*, or any Man, nay *Rowley* himself, shou'd attempt any such Thing, he wou'd be the Death of him, before any Man shou'd seize upon his Arms.

Serj. *Jefferies.* Did he desire you to provide Arms for yourself?

Smith. He desir'd me to get Arms; for he said I did not know how soon I might make Use of them; and I had Armour from him, but it being too big, I return'd it him, and bought New: He did not say to what Purpose we must arm.

Mr. Attorney. What did he say about seizing the King?

Smith. He said the Parliament had agreed to secure the King, and in order to it, the Parliament-men were to come arm'd with their Men.

Col. What Religion are you off?

Smith. Shall this Man ask me such a Question, my Lord?

L. C. J. Answer him.

Smith. I am a Protestant, and in Orders.

Col. You were a Priest, and had your Orders from the Church of *Rome.*

Smith

Smith. And that is a good Ordination: I came in voluntarily, and diſcover'd the Popiſh-Plot, and have receiv'd no Penſion or Salary from the King, but ſpent my own Mony, and was the Darling of the City, while I did what they wou'd have me do.

Mr. Attorney. Were not you a Witneſs at my Lord *Stafford*'s Tryal?

Smith. I gave a general Account of the Deſign of the Papiſts; and my Reputation was not then queſtion'd.

Page 780.

Col. I don't know one Word of what he teſtifies againſt me; nor can I diſtinguiſh the Times he ſays we had thoſe ſeveral Diſcourſes: He is the falſeſt Man that ever ſpoke with a Tongue.

Bryan Haynes was ſworn.

Mr. Attorney. Tell the Court what Diſcourſe you have had with the Priſoner.

Haynes depoſes, that the Whigs intended to call King *Charles* the 2d to Account as they did his Father.

Haynes. I have been acquainted with him ever ſince *March* laſt, before the Sitting of the Parliament at *Oxford*; there being a Warrant out againſt me, I apply'd myſelf to Mr. *Colledge*, who promis'd to adviſe with a Perſon of Honour to know whether it might not be ſuperſeded; and the next Day, when I came to him to know the Reſult, he bid me be of good Cheer, for the Parliament wou'd ſit at *Oxford* ſoon, and I need not value the King of a Pin; for, *ſays he*, He is in a worſe Condition than you or I, and you ſhall ſee him call'd to an Account for his Actions: The World ſees he reſolves to bring in Arbitrary Power and Popery, and unleſs he lets the Parliament ſit at *Oxford*, we will ſeize him there, and bring him to the Block, as we did the Loggerhead his Father: The Parliament ſhall ſit at *Guildhall*, and redreſs the Subjects Grievances: And you ſhall ſee, that no King of his Race ſhall ever reign in *England* after him.

L. C. J. Where was this he ſaid ſo?

Haynes. I walk'd with him from his own Houſe by *Bridewel*, to the *Hercules* Pillars, and we went up Stairs, and there we had all this Diſcourſe: And when I aſk'd how this was poſſible, tho' the Duke of *Monmouth* was a fine Prince, and ſtood up

for

for the Proteſtant Intereſt, as they pretended; and *Colledge* anſwer'd, We make but an Idol of him to cover our real Deſign: Do you think the wiſe People of *England* will ever make a Baſtard upon Record King of *England?* No, tho' we praiſe his Actions, we can't endure him, becauſe he is againſt his own Father; but unleſs the King expel from his Council the Earl of *Clarendon*, the cunning *Lory Hyde*, and the Earl of *Halifax*, that great Turn-coat Rogue, who was once ſo much againſt the Papiſts, we ſhall make *England* too hot for him.

Col. Pray, how is this poſſible?

Haynes. You knew my Condition, and I had intimated that I was as much for Treaſon and Villainy as you, at that Time; and when I obje&ted there was no Preparations equal to ſuch a Deſign, and that the Gentlemen wou'd hardly quit their Eaſe for a Civil-War, ſays he, You are miſtaken, we have 1500 Barrels of Powder in the City, and 100,000 Men ready at an Hour's Warning; and we have prepar'd every Thing againſt the Sitting of the Parliament at *Oxford*; and you ſhall ſee *England* the moſt glorious Nation in the World, when we have cut off that beaſtly Fellow *Rowley*; and he added, The King came of a Race of Buggerers, for his Grandfather, King *James*, bugger'd the old Duke of *Buckingham*. Then he rail'd at Judge *Pemberton*, and ſaid, let him try *Fitz-Harris* if he dare, I ſhall ſee him go to *Tyburn* for it, I hope, a Turncoat Rogue. And another Time he put me upon charging the King with firing the City before ſome Company, and the Murder of Sir *E. Godfrey*: And as we were talking of *Fitz-Harris*'s Libel, he ſaid, 'The 'Devil take me, every individual Word is as 'true as God is in Heaven; and if you don't 'join with *Fitz-Harris*, and charge the King home, 'you are a baſe Fellow; for he makes you Slaves 'and Beggars; and 'tis Charity to charge him 'home, that we may be rid of ſuch a Tyrant.

Page 781.

Serj. *Jefferies.* Mr. *College*, You may aſk him any Queſtions.

Col. Certainly, my Lord, the Thing ſpeaks it; he is not to be talk'd withal. Is it probable I ſhou'd talk to an *Iriſhman*, that does not underſtand Senſe?

Haynes. 'Tis better to be an honeſt *Iriſhman* than an *Engliſh* Rogue.

Col. Did you ever ſee me before laſt *March*, when you ſay this Diſcourſe was about ſuperſeding the Warrant?

Haynes. I had no Intimacy with you, but I had ſeen you in Coffee-houſes bawling againſt the Government.

Col. Then this was the firſt Time you diſcours'd with me?

Haynes. No, once you ſet me to quarrel with one at the *Queen's-Head* at *Temple-bar*, and you were with me the Night before with Capt. *Browne*, and they gave us a blue Ribbon, to diſtinguiſh we were Proteſtants from Biſhops-Men, which we were to uſe when the King was ſeiz'd.——And when *Colledge* return'd from *Oxford*, I told him, the King had made a Fool of them; and he anſwer'd, they had not done with him yet: That no Body did ſuſpect he wou'd diſſolve the Parliament that Day he did; and that he took Coach and went away before the Parliament cou'd get down, otherwiſe they had been too hard for him; for there was never a Parliament Man, but had divers armed Men to wait on him; and, *ſays he*, I had my Blunderbuſs and my Man to wait on me, but there is a God above will rule all.

Page 782. *Col.* When was the firſt Time I talk'd with you?

Haynes. I told you before.

L. C. J. Tell him when was the firſt Time you came acquainted with him.

Haynes. In *April* laſt.

Coll. You ſaid it was before the Sitting of the Parliament, which was in *March*.

Haynes. I meant in *March*.

Col. Then, Gentlemen, pray conſider whether it is probable I ſhou'd diſcourſe with him at that Time in this Manner: You ſay I deſir'd you to make an Affidavit about *Fitz-Gerald*, Was it before

or

or after, I had this treasonable Discourse with you?

Haynes. After the Affidavit, when we went to the *Hercules* Pillars, about a Week after.

Mr. Attorney. Did he deliver you a Ribbon, as a Mark of Distinction?

Haynes. Yes: Here it is. [*And he shew'd it in Court.*]

Mr. *Turbervile* was sworn.

Serj. *Jefferies.* Pray acquaint the Court what Discourse you have had with Mr. *Colledge.*

Turbervile's Evidence of the Design to seize the King at *Oxford.*

Turbervile. About the Middle of that Week the Parliament sate at *Oxford*, I din'd with Mr. *Colledge*, Capt. *Browne*, and *Don Lewes*, at the *Chequer* Inn here; and after Dinner, *Don Lewes* being gone out, and *Brown* asleep on the Bed, *Colledge* and I fell discoursing of the Times; and I said, I thought the Parliament was not a long-liv'd Parliament; and *Colledge* reply'd, There is no Good to be expected from the King, he and all his Family were Papists, and had ever been such. Says I, Perhaps the King will surprize the Parliament, or use some Stratagem to bring them to his Terms; and *Colledge* answer'd, I wou'd he wou'd begin; but if he does not, we will secure him 'till he comes to those Terms we wou'd have from him; for here are several brave Fellows about this Town, and many more are coming, that will join in it: And he said, he had got a Case of Pistols, and a very good Sword, and I believe he had Armour on, but I can't be positive.

Mr. Attorney. Did he tell you he came down on Purpose to seize the King?

Turbervile. Yes, and gave me a Piece of blue Ribbon to put in my Hat to distinguish us, if there shou'd be any Disturbance; and when I told him I had never a Horse, and nothing but a Case of Pistols, he bid me not trouble myself, for he wou'd get me a Horse. Page 783.

Col. What to do?

Turbervile. He said, there was a Design to seize the King?

Mr. Attorney. Did he desire you to be one?

Turbervile. He desir'd me to be ready to assist.

Mr. *Jones.* How much Ribbond had he?

Turbervile. Forty or fifty Yards.

Col. Did I ſpeak of any Body that was to join with me?

Turbervile. You did not name any Body to me; but Capt. *Brown* was with you.

Col. Pray, how came I to talk Treaſon to you; was any Body by?

Turbervile. No, Capt. *Brown* was gone to Sleep, and *Lewes* was gone out.

Col. God forgive you, I never held any ſuch Diſcourſe in my Life: Pray, when did you give in this Information againſt me?

Turbervile. I believe a Day or two before I came to *Oxford.*

Col. Why did you do it then and not before?

Turbervile. Mr. *Dugdale* told me, the Grand Jury of *London* wou'd not find the Bill, which I wonder'd at; for every one that convers'd with him, might have been an Evidence againſt him, he was ſo laviſh of his Tongue againſt the King and Government; ſo Col. *Warcup* came and took my Examination.

Serj. *Jefferies.* My Lord, Here is one Mr. *Maſters*, whom Mr. *Colledge* will allow to be a Man of undoubted Reputation, I deſire he may give the Jury an Account of the Priſoner.

Mr. *Maſters* was ſworn.

Serj. *Jefferies.* Pray tell the Court what Diſcourſe you had with the Priſoner?

Maſters's Evidence of *Colledge's* juſtifying the Parliament of 40. Page 784.

Mr. *Maſters.* I have been many Years acquainted with Mr. *Colledge*, and have often reprov'd him for being ſo violent; but a little before the Parliament at *Oxford*, we were diſcourſing of the Government, and he juſtify'd the Actions of the long Parliament in 40: And I aſk'd him how he cou'd have the Impudence to juſtify their Proceedings, who rais'd that Rebellion againſt the King, and cut off his Head? And *Colledge* anſwer'd, They did nothing but what they had juſt Cauſe for; and the Parliament that ſate laſt at *Weſtminſter*, was of the ſame Opinion.— And the 13th of *May* afterwards, when the Common-Council met at *Guildhall*, ſeeing him there, ſaid I, Col. *Colledge*,

What

What do you make all this Buſtle for? and he anſwer'd, Marry, mock not, I may be a Colonel in a little Time.

Sir *William Jennings* was ſworn.

Mr. *Jones.* What do you know concerning Mr. *Colledge* at *Oxford*?

Sir *W. Jennings.* I had no Knowledge of Mr. *Colledge* before he came down to *Oxford*, otherwiſe than as I had ſeen him in a publick Coffee-houſe: But when I was at *Oxford*, obſerving ſeveral People looking at a Picture, I crowded in among the reſt; and after the Crowd was over, Mr. *Colledge* took a Picture out of his Pocket, and ſaid he wou'd give me one, which I accepted: There was written *Mac-a-top* on it, and ſeveral Figures were on it: [*Here a Picture was ſhewn him, which he ſaid was the ſame.*] And ſhewing it to Juſtice *Warcup*, he bid me give it him, and ſo I did.——Another Time I ſaw Mr. *Colledge* bring a Parcel of blue Ribbons into a Coffee-houſe, with theſe Words wrought twice in every Quarter of a Yard, (*viz.*) *No Popery*, *No Slavery*; and I ſaw him ſell a Yard of it for two Shillings, to one whom I took to be a Member of Parliament, and the Gentleman took it and ty'd it upon his Sword.—— What I have farther to ſay is, that the Day the Parliament was diſſolv'd, as I was ſtanding in the School-Yard, Mr. *Colledge* came up to me, and told me he had been in a Quarrel; Mr. *Fitz-Gerald* had ſpit in his Face, and he ſpit in his Face again, and ſo they went to Loggerheads. Says I, Mr. *Colledge*, your Noſe bleeds; and he anſwer'd, *I have loſt the firſt Blood in the Cauſe, but it will not be long before more be loſt.* When I came to *London* afterwards, I met him in *Fleetſtreet* on a *Sunday*: How now, honeſt Joyner? ſaid I. Says he, You call me honeſt Joyner, but ſome call me Rogue and Raſcal; but I have been beating ſome of them that I believe will be aware of it; and I obſerv'd to Capt. *Creſcet*, who was with me, that I never met this Man but he had been in ſome Quarrel.

Ribbons with, *No Popery, no Slavery*, worn by the Whigs.

Col. Sir *William*, you are a Gentleman, and have a Regard to your Word and Honour; as for the other Witneſſes, they don't care what they ſay;

ſay; nor am I much concern'd about it. Pray will you recollect yourſelf? I was vindicating the Commons and Doctor *Otes*, whom *Fitz-Gerald* had abus'd, and upon that the Quarrel began; ſo when I met you, and you told me my Noſe bled, I ſaid, *I have loſt the firſt Blood for the Parliament, I wiſh it may be the laſt.* Were not theſe the Words?

Sir *W. Jennings.* I have ſaid before as I do now, that I had rather have ſerv'd the King in three Engagements, than have come hither againſt you, or any Man, upon this Occaſion; nor have I any Prejudice againſt you, but, to the beſt of my Memory, the Words were as I ſpoke them at firſt, and nothing of the Parliament mention'd: And having told Juſtice *Warcup* this Story, I am brought hither to atteſt it.

Serj. *Holles.* We have concluded our Evidence for the preſent, 'till we ſee what the Priſoner ſays to it.

Page 785. L. C. J. Then, Mr. *Colledge*, you may ſay what you will in your Defence, and call your Witneſſes.

Colledge's Defence. *Col.* My Lord, The Juriſdiction againſt me, is for treaſonable Practices and a Conſpiracy; I deſire to know if there be any Conſpiracy prov'd; or any Thing but what they ſay, *I ſaid?*

L. C. J. If the Witneſſes ſpeak true, there is plain Proof of a Conſpiracy: As your publiſhing Libels and Pictures to make the King odious and contemptible in the Eyes of the People, and being the Author of them; and your preparing Arms, and ſhewing them to *Smith*; and ſaying, you wou'd go to *Oxford*, and if there ſhou'd be a Diſturbance there, you wou'd ſecure the King; and you did come to *Oxford* accordingly; and you hear what *Dugdale* and *Turbervile* ſay you ſaid and did there: Now this is a ſtrong Evidence againſt you; for an Endeavour to ſeize the King's Perſon has been always held to be Treaſon, by the 25th of *Ed.* III. for Kings are never made Priſoners, but in order to their Death: And the Statute of the 13th of this King, is ſtronger againſt you; for that ſays, If a Man ſhall, by any Words, or malicious Speaking, ſhew the Imagination of his Heart,

Heart, that he hath ſuch Intention, that is Treaſon too.

Col. I wou'd know if there be ſufficient Matter to ground this Indictment upon? For one ſwears what was done in one Place, and the other in another: And I wou'd aſk your Lordſhip, if there ought not to be two Witneſſes to the ſame Words ſpoken at the ſame Time.

L. C. J. It hath been often reſolv'd, that if there be one Witneſs to prove one Fact, and another to another Fact, which is an Evidence of the ſame Treaſon, tho' there be but a ſingle Witneſs to each Fact, they are two Witneſſes ſufficient to ſupport the Indictment, as was held in my Lord *Stafford*'s Caſe: And farther, If one Witneſs proves what was ſaid in *Oxford*, and another proves what was ſaid in *London*, if they relate to the ſame Treaſon, it is ſufficient: If you conſpire to commit Treaſon in *London*, and come with ſuch an Imagination in your Heart to *Oxford* to compleat this Treaſon, tho' your Deſign was not firſt form'd here, I think if this be prov'd, it maintains an Indictment of Treaſon, and they are two good Witneſſes, tho' but one of them ſpeak to what was done at *Oxford*; but in your Caſe, there are two Witneſſes beſides Sir *John Fennings*, who ſpeaks fully to the Facts at *Oxford*.

There need not be two Witneſſes to every Overt-Act, but one Witneſs to one Overt-Act, and another Witneſs to another conducing to the ſame Treaſon is ſufficient, tho' the Acts were in ſeveral Counties.

Col. My Lord, Don't you take the Words diſtinct from any Matter of Fact?

L. C. J. No, complicated with the Fact, which was the Overt-Act: The Coming to *Oxford* with Piſtols to make one, if there had been any Diſturbance, to ſeize the King.

Col. Can any Act done in *London* be brought to prove the Treaſon I am indicted for here?

L. C. J. Yes: That was reſolv'd in Sir *H. Vane*'s Caſe: He was indicted for levying War: The Conſpiracy was in *Weſtminſter*, but the War was in another County, and yet it was held ſufficient to maintain the Indictment in the County of *Middleſex*. Page 788.

Col. There was War actually levy'd; but here is only bare Words.

Mr. J. *Jones.* Yes, there are Actions too; your arming yourself and coming to *Oxford.*

Here the other Judges declar'd they were of the same Opinion in Point of Law with the Chief Justice.

Col. My Lord, I don't doubt but I shall prove this to be one of the most hellish Conspiracies that ever was: A Design to destroy all the Protestants in *England* that had the Courage to oppose the Popish Plot, in which no Man of my Condition has done more than I have: If these Witnesses had known me guilty of such a Design as I am charg'd with, and had been good Subjects, they wou'd have apprehended me at *Oxford*: But how improbable is it, that I shou'd talk such Things with Papists, Priests, and *Irishmen*, who had broke their Faith with their own Party, which they had given under a Penalty of Damnation, Men who had been concern'd in Plots and Treasons, to cut the Throats of Protestants: Indeed I did hear there was a Design of destroying the Parliament at *Oxford*, and against all Protestants; and I was resolv'd, if I liv'd, to come along with the Parliament; and if there was any such Design, to live and die with them; but my Arms were no more than a Sword and a Case of Pistols: My Lord, I had the Honour to be sent for before the Sitting of the last Parliament at *Westminster*, by some noble Peers, to the *Crown* Tavern behind the *Exchange*: (I began then to be popular, and to be call'd *the Protestant Joyner*) And the Duke of *Monmouth* said, they heard a good Report of me, and that I understood Building, and they confided in me to search under the Parliament House, that there might be no Tricks plaid them by the Papists; and my Lord *Lovelace* went with me and some of the House of Commons, and I receiv'd Thanks for my Service. And, my Lord, there was not only an Oath made of a Design to destroy the Parliament at *Oxon*, but it was the general Belief some Evil was intended them; and People generally arm'd themselves with Sword and Pistol, lest they shou'd be attack'd by the Papists: And I came down two Days after the Parliament sate, with the Lords *Howard*, *Clare*, *Huntington*, and *Pagett*, and

Page 787. *Colledge* confesses he came to *Oxford* with an Intention to defend the Parliament.

Says, That it was generally apprehended the Papists design'd to destroy the Parliament, and People provided themselves with Arms for their Defence.

and went to Town again with the Lord *Lovelace*, Sir *Tho. Player*, and Sir *Robert Clayton*, who were all in great Fear of *London*, being ſurpriz'd by the Papiſts; but no mortal Man ever heard of the King's being ſeiz'd, 'till theſe Men come and ſay I had ſuch a Deſign, and came hither for that Purpoſe: But, my Lord, 'tis a moſt wicked Falſhood; I know no Man, either Parliament Man or other, that wou'd have ſtood by me in ſuch a Deſign; and can any Man ſuppoſe that I wou'd ſingly have made ſuch an Attempt: I declare, I never knew of any Deſign againſt the Government, or ſpoke one of the treaſonable Words I am charg'd with: God, my Eternal Judge, knows that I ſpeak true.

L. C. J. Well! Will you call your Witneſſes? For I muſt tell the Jury as I did before, at your Requeſt, concerning Mr. Attorney, that no Allegation is to be believ'd, unleſs it be prov'd: No Man wou'd ever be guilty, if himſelf were to be believ'd.

Mr. Attorney. My Lord, I hope he ſhall obſerve the ſame Rule we did, and call but one Witneſs at a Time. Page 762.

L. C. J. Are not your Witneſſes together? Send to them.

Col. I don't know, I han't ſeen one of them ſince I came: This is not the firſt Time the Papiſts have had a Deſign againſt my Life, tho' 'tis the firſt Time they went about to take it away by Law.

L. C. J. I don't know one Papiſt that was a Witneſs againſt you.

Col. Every Man of them have been Papiſts, except Sir *W. Jennings*.

Mr. Attorney. Was Mr. *Maſters*?

Col. He teſtifies only ſome merry Diſcourſe.

Mr. J. *Jones*. Do you make Merry with the blackeſt Tragedy that ever was, that horrid Rebellion and the Murder of the King?

William Shewen was call'd.

Col. What do you know of Mr. *Turbervile*?

Colledge calls his Witneſſes, and endeavours to prove a Conſpiracy againſt him and other Whigs.

Shewin. I heard him ſay laſt *Thurſday* Night at *Charing-croſs*, that if I went to *Oxon* I ſhou'd hear ſtrange Things againſt *Colledge*; and he wou'd lay ten to one that Mr. *Bethel* and Mr. *Wilmore* ſhou'd be hang'd at *Chriſtmas*, and he wou'd lead *Bethel* by the golden Chain along *Fleetſtreet*, and down with his Breeches in the Middle of the Coffee-houſe, with a Band about his Neck and a Cloak.

Serj. *Jefferies.* I'll aſſure you he's a bold Man, to ſay all theſe Things againſt Sheriff *Bethel.*

Col. Do you know any Thing of this Conſpiracy?

Shewin. I know they laid who ſhou'd be hang'd at *Candlemas*, who at *Chriſtmas*, and who at ſeveral other Times.

Col. Did they ſay when I ſhou'd be hang'd?

Shewin. I heard there was one to be return'd on the Jury, that was reſolv'd to hang him, right or wrong.

Mr. H. Sheriff. I did hear there was ſuch a one, and I left him out of the Jury.

Page 781.

Henry Hickman was call'd.

He depos'd, That *Haynes* uſed to come to ſee one that lodg'd at his Houſe, and his Lodger told him, that *Haynes* was a Papiſt, and a very dangerous Fellow; and that once he liſtned at the Door when *Haynes* came to ſee his Lodger, and he overheard *Haynes* ſay, *God damn me, I care not what I ſwear, nor who I ſwear againſt; for 'tis my Trade to get Money by Swearing.* And that *Haynes* ſwearing againſt my Lord *Shaftsbury*, the Deponent bethought himſelf of it.

Mrs. *Oliver* was call'd.

She depos'd, That *Bryan Haynes* wrote a Letter in her Father's Name unknown to him.

L. C. J. By whom is it ſubſcrib'd?

Clerk. By no Body.

Mrs. *Oliver.* He wrote it as from my Father, and ſent it into the Country.

Mr. Attorney. Did you ever know him forſwear himſelf?

Mrs. *Oliver.* No.

Mrs. *Hall* was call'd.

Witneſſes call'd to take off the Credit of *Haynes's* Evidence.

She depos'd, That *Bryan Haynes* lodg'd at her Houſe; and, about the Time of *Fitz-Harris's* Tryal *Haynes* told the Deponent that the Dutcheſs of *Portſmouth* came to him, and begg'd of him, upon her Knees, that if he had any Kindneſs for his Majeſty, he wou'd ſhew it at that Juncture: That ſhe underſtood he had formerly an Acquaintance with *Everard*, and deſir'd he wou'd renew it, and endeavour to get him over, and ſome others, and make a Preſbyterian Plot of it.

L. C. J. What a Story is this? Page 790.

Mrs. *Hall* depos'd farther, That *Haynes* told her he had receiv'd a Meſſage from the King by a Juſtice of the Peace, offering him his Pardon, and deſiring him to accuſe certain Perſons; but *Haynes* ſaid, he wou'd never do ſuch baſe Things.

Mr. Attorney. Did you believe him to be ſo honeſt a Man that he wou'd not do thoſe baſe Things?

Mrs. *Hall.* I never ſaw his Face 'till he came to lodge here; but I found him to be a Man that made but little Conſcience of what he ſaid or ſwore: And I remember, when *Thomſon*, in his *Weekly Intelligence*, accus'd *Bryan Haynes* of ſpeaking treaſonable Words, *Haynes* read an Advertiſement to us, which he ſaid he deſign'd to publiſh, *viz. That he challeng'd any Man to charge him with Treaſon; but he own'd he was employ'd to put the Plot upon the Diſſenting Proteſtants.*

L. C. J. Did he ever publiſh that in the *Intelligence?*

Mrs. *Hall.* I never read it publiſh'd.

Mary Richards, Mrs. *Hall's* Maid, appear'd.

She depos'd, That *Haynes* wrote ſuch an Advertiſement, *viz. That he challeng'd any one to charge him with Treaſon, but he own'd he was employ'd in putting the Plot upon the Diſſenting Proteſtants:* And that he told her Miſtreſs he had a Meſſage from the King, offering him his Pardon; and being aſk'd why he did not accept of it, he anſwer'd, he was to do ſuch baſe Things, ſo beneath a Man, he wou'd never do them; and that he had 500*l.* offer'd him, beſides the King's Pardon.

Mr. Att.

Mr. Attorney. When was this?

Maid. It was a Week before he was taken.

Mrs. *Wingfield* appear'd.

Col. What do you know of *Haynes?*

Wing. I know he is an honeſt Man; he marry'd my Daughter, and always behav'd himſelf like a Gentleman, and never did any thing unhandſom in his Life.

Mr. Serj. *Jefferies.* Have you any more ſuch Witneſſes?

Col. I never ſaw her before; but I believe ſhe has ſaid the contrary in another Place.

Wing. No Body can ſay ſo; and I had done the Gentleman a great deal of Wrong if I had.

Page 791. *John Whaley* appear'd.

He depos'd, That about ſix Years ago *Haynes* was a Priſoner in the King's Bench, where the Deponent ſold Drink, and that *Haynes* came into his Cellar to drink, and carry'd away a Tankard.

L. C. J. Why did you not indict him for it?

Whaley. I acquainted the next Juſtice of Peace, who was the Marſhal, and he put him from the Maſter Side to the Common Side.

L. C. J. He was no good Juſtice of Peace, in the mean Time.

John Lun appear'd.

He depos'd, That three or four Days after the Bill againſt *Colledge* was brought in *Ignoramus* by the Grand Jury, he went into the *Derby* Ale-Houſe by *Fleet-Ditch*, where he found *Bryan Haynes*, who aſk'd him to drink a Tankard with him, to which the Deponent conſented; and *Haynes* began the King's Health, the Queen's, and the Duke of *York*'s, and then he fell foul upon the Grand Jury, becauſe they had not found the Bill againſt *Colledge*, and ſaid, my Lord *Shaftsbury* was a little Toad, but he won'd do his Buſineſs very ſuddenly; and that the Parliament were a Company of Rogues, they would give the King no Money, but he wou'd help him to Money out of the Fanaticks Eſtates: And that *Haynes* added, They would damn their Souls to the Devil before the Catholicks Cauſe ſhou'd ſink.

Lun depos'd farther, That on *Monday* laſt he met with *Haynes* at the *Crown* in *Colebrook*, and he drank the King's Health with him; and the Deponent aſking *Haynes* how he did, *Haynes* aſk'd if he knew him; and the Deponent told him he had drank with him once before; and *Haynes* reply'd, You have a good Memory: And as they were talking of Sheriff *Bethel*'s marrying a Woman they ſaw there, the Deponent ſaid, Sheriff *Bethel* is able to maintain her, he has a good Eſtate; and *Haynes* anſwer'd, it ſhall be the King's e'er long.

Col. So that here is a plain Deſign againſt all eminent Proteſtants.

Haynes. I never ſaw this Man till I met him at *Uxbridge*; and I aſk'd Mr. *White*, the King's Meſſenger, who he was, and he ſaid his Name was *Lun*, and he was his Priſoner two Years before.

Mr. *White* was ſworn.

L. C. J. Do you remember that *Haynes* aſk'd who Mr. *Lun* was?

White. I was at the Bar at the *Crown* at *Uxbridge* when Mr. *Lun* came into the Yard, and being acquainted with him, I aſk'd him how he did, and he call'd for a Pint of Sack to make me drink; and *Haynes* ſtood by and aſk'd who he was, and we drank the King's Health; but I heard none of the Words *Lun* mentions.

Mr. Serj. *Jefferies.* Did *Lun* mention any former Meeting with *Haynes* at *Fleet-bridge*?

White. Not one Word of that.

Lun. I will take the Sacrament upon it, what I ſay is true.

Mr. Serj. *Jefferies.* We know you, Mr. *Lun*: We only aſk theſe Queſtions that the Jury may know you too; we remember what you ſwore once about the Army.

Lun. I don't come to give Evidence of any Thing but the Truth; I never was upon my Knees before the Parliament for any thing.

Mr. Serj. *Jefferies.* Nor I for much; but yet once you were when you cry'd, *Scatter them, good Lord.*

Jeremiah

Jeremiah Broadgate appear'd.

Page 792. He depos'd, That meeting Mr. *Turbervile*, who ow'd him ſome Money, they went to drink a Glaſs of Ale together; and *Turbervile* aſk'd the Deponent after my Lord *Powis*'s Butler, and ſaid, he had been a great Rogue to him, for when he ſtood up for the Nation he vilify'd his Evidence: And that *Turbervile* ſaid farther, That the King's Witneſſes were look'd upon as mean inconſiderable Fellows, and their Salaries leſſen'd; and that he had great Profers from Court of Preferment and Rewards, if he wou'd go from what he ſaid, and come upon the contrary; and added, Yes, upon the Faith of a Man, from the higheſt; but ſaid, he had a Soul and a Body; a Body for a Time, but a Soul for Eternity; and he cou'd not go from it.

Col. Did he ſay what he was offer'd, and from whom?

Broadg. He ſaid he had great Offers from the Court if he wou'd diſown the Popiſh Plot.

L. C. J. He does not diſown it, or ever did.

Col. But he wou'd make a Preſbyterian Plot of it now.

John Zeal appear'd.

He ſaid he knew nothing of the Matter, but what Mr. *Ivy* told him; whereupon

Mr. *Ivy* was call'd.

Col. What have you heard *Turbervile* ſay of me, or of any Preſbyterian Plot?

Ivy. I never heard him ſay any Thing of a Preſbyterian Plot.

Col. Did not you call me out with *Macnamarra* and *Haynes* to the *Hercules* Pillars?

The Priſoner muſt not call Witneſſes againſt the Witneſſes he has produc'd.

L. C. J. If you call Witneſſes, you muſt take what they teſtify for Truth, and muſt not afterwards call another Witneſs to diſprove your own Witneſs.

Col. If he has ſworn againſt me I wou'd not aſk him any Queſtions, for I can't expect a good Anſwer from him; but he was by when *Haynes* made his Diſcovery.

L. C. J. Will you aſk him any Queſtions?

Col.

Col. I ask him if he has given any Evidence against me any where?

Ivy. Yes, I have.

Col. Then I think he is no good Witness for me: Call Mr. *Lewes.*

William Lewes appear'd.

Col. Do you know any Thing concerning any of the Evidence that hath been given here? Page 793.

Lewes. No more than what *Zeal* told me was told him.

Col. Do you know any Thing of a Presbyterian Plot?

Lewes. If the Court please, I will tell my Knowledge of that; but I know nothing that concerns the Prisoner, only what concerns my Lord *Shaftsbury.*

L. C. J. That's nothing to the Purpose; call another.

Col. There was a Petition preferr'd to the Common Council at *London,* wherein the Petitioners set forth, that they were tamper'd with all about a Plot against the Protestants.

L. C. J. From whom was that Petition?

Col. From some of these Witnesses; pray, call Dr. *Otes.*

Otes appear'd.

Col. Pray, where is the Petition to the Common Council?

Otes. I have it in my Hand, it was presented by Mr. *Turbervile* and *Macnamarra* to Mr. *Wilmore.*

Clerk reads the Petition.

L. C. J. What is there in this Petition that contradicts what the Witnesses have said now? They say they have been tempted by the Papists to unsay what they have said; but the Jury have heard it read, and will give it its due Weight.

Col. Pray, Mr. *Otes,* what do you know of Mr. *Turbervile?*

Otes. A little before the Witnesses were sworn at the *Old Baily* I met Mr. *Turbervile,* and ask'd him if he was a Witness against *Colledge,* and Mr. *Turbervile* said he wou'd break any Man's Head that shou'd say so, for he neither was a Witness nor cou'd give any Evidence against him; but meeting

Otes call'd to discredit the Testimony of *Dugdale, Turbervile,* and *Smith,* who had supported his Evidence as to the Popish Plot.

ing him afterwards at *Oxford*, and asking him if he had any thing againſt *Colledge*, he ſaid, Yes, he had been ſworn before the Grand Jury: Says I, did not you tell me ſo and ſo? Why, ſays he, the Proteſtant Citizens have deſerted us, and *God damn him, he wou'd not ſtarve.*

L. C. J. Wou'd he ſay ſo to you?

Otes. He ſaid thoſe very Words.

L. C. J. What ſay you to this, Mr. *Turbervile*?

Mr. *Turb.* My Lord, 'tis true, I did meet the Doctor near my Lodgings, and he came out of his Coach and ſpoke to me, and invited me to come to my old Friends; for he ſaid they had ſome Jealouſy I was not true to them, and told me if I wou'd come to the *King*'s *Head* Club I ſhou'd be receiv'd with abundance of Kindneſs, and I never after ſpoke to Mr. *Otes* any thing about Evidence; I never ſaid I wou'd break any one's Head that ſaid I was an Evidence againſt *Colledge*, or ſwore I wou'd not ſtarve, *&c.*

Otes. Upon the Word of a Prieſt, he did ſay thoſe Words to me, which made me afraid of him, and I went away and never dare ſpeak to him afterwards.

L. C. J. 'Tis very improbable he ſhou'd ſpeak theſe Words to you.

Turb. I always look'd upon Dr. *Otes* as an ill Man, and never convers'd much with him.

Col. Do you know any thing of the reſt, Doctor?

Otes. I know nothing more of *Turbervile*, but that he preſented the Petition, wherein he ſays he lay under great Temptations to go on the other Side and accuſe ſome Proteſtants.

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Mr. Attorney. Mr. *Turbervile* has not chang'd Sides as you have; he is ſtill an Evidence for the King; you are againſt him.

Otes. I am againſt Falſhood and Subornation; and it may be made appear plainly that there is Subornation againſt the Proteſtants.

L. C. J. You wou'd do well to explain your ſelf.

Mr. Serj. *Jefferies.* Pray, make it out, Doctor.

Otes. As to Mr. *Smith*, I know that ſome provoking Language having paſs'd between him and *Colledge*, at *Richard*'s Coffee-Houſe, *Smith* came out

and

and ſwore, *God damn him, he wou'd have his Blood!* And when I told him theſe Words did not become a Miniſter of the Goſpel, he reply'd, *God damn the Goſpel.* This is Truth, I ſpeak it in the Preſence of God and Man.

L. C. J. What can you ſay of the other Witneſſes?

Otes. As for *Dugdale*, I was engag'd with him to *Richard* the Coffee-Man for 50 *l.* he borrow'd of him; and after *Dugdale*'s Return from *Oxford*, I call'd upon him to haſten and get his Money of the Lords of the Treaſury; and *Dugdale* ſaid there was a great Talk of his being an Evidence againſt my Lord *Shaftsbury*, and ſeveral other Proteſtants; but he call'd God to witneſs he knew nothing againſt any Proteſtant in *England*: Afterwards, meeting him at *Richard*'s Coffee-Houſe, and preſſing him for the Money, he ſaid, he wou'd pay it in a little Time: Mr. *Dugdale*, ſaid I, I'm afraid you have gone againſt your Conſcience, I am ſure againſt what you told me. Says he, It was all along of Colonel *Warcup*, for I cou'd get no Money elſe.

Mr. Attorney. Mr. *Otes* is a thorough-pac'd Witneſs againſt all the King's Evidence.

Mr. Serj. *Jefferies.* And yet he had been alone in ſome Matters if it had not been for ſome of theſe Witneſſes.

Dr. *Otes.* Perhaps not; but I had always a better Reputation than to need theirs to ſtrengthen it.

Mr. Serj. *Jefferies.* Does any Body meddle with your Reputation? But you are ſo tender ——

Col. You don't do well to affront a Man's Witneſſes when he is for his Life.

Mr. Serj. *Jefferies.* I don't affront them; but pray, Mr. *Smith*, what do you ſay to what *Otes* teſtifies?

Mr. *Smith.* There is not one Word of it true, upon my Oath; and I ſhall prove that he has confounded the Goſpel and deny'd the Divinity too.

Otes. Now Mr. *Dugdale* is come, I will tell you ſomething more: He had an old Clap, and he gave

gave it out he was poiſon'd; and this Sham paſs'd through the Kingdom in the Weekly Papers: This I can make appear by the Phyſician that cur'd him.

Dugd. Upon the Oath I have taken, and as I hope for Salvation, what *Otes* has depos'd is falſe; and if any one will come and ſay he cur'd me of a Clap, I will ſtand guilty of what is imputed to me.

Mr. Attorney. 'Tis unhappy that Mr. *Otes* ſhou'd come in againſt thoſe Men who ſupported his Evidence before.

Page 795. *Col.* Sure what my Witneſs ſays is not to ſtand for nothing, and be hooted out of Court, becauſe Mr. *Dugdale* denies it upon his Oath; I do not ſuppoſe he will own it; but God is my Witneſs he hath ſaid a great deal more to me.

Whether a Witneſs, who is not upon his Oath, ought to have the ſame Credit with one that is.

L. C. J. Unleſs you can prove it, you ſhou'd not ſpeak it; and as to your Witneſſes not being upon their Oaths, they are Witneſſes however, and their Weight is left to the Jury; but is it not improbable that theſe three Men ſhou'd all come to him, and ſay what wou'd make themſelves Rogues and Villains. And you ſee there is theſe three Mens Oaths againſt this one Man's Affirmation.

Otes. I hope my Word will be believ'd as ſoon as their Oaths.

Col. What an honeſt Man ſays in the Face of a Court is to be believ'd as well as what is ſworn.

L. C. J. It is allow'd to be a Teſtimony, but it muſt be left to the Jury, who muſt weigh one againſt the other.

Col. There is Mr. *Wilmore*, who was Foreman of the Grand Jury, who refus'd to find the Bill upon this Evidence, wou'd have been a material Witneſs for me.

L. C. J. He has enough to do to clear himſelf; for he is charg'd with High Treaſon too by two Witneſſes.

Mr. *Blake* was call'd.

Col. Pray, will you tell the Court what you know of *John Smith?*

Blake. He came to me one Morning, and told me, this *Haynes* had diſcover'd very material

Things

Things againſt ſome great Perſons; and a few Days after I was with him at a Tavern, and aſk'd him his Senſe of *Haynes*'s Diſcovery, and he ſaid, it was a ſham Plot, a Meal-Tub Plot.

Mr. *Samuel Smith* appear'd.

He depos'd, That having heard his Couſin *John Smith* had ſworn againſt *Colledge* at the *Old Baily*, he afterwards met him, and told him, he hoped he cou'd not be that ill Man he was repreſented; and that the Story of his having ſworn a Preſbyterian Plot, or a Proteſtant Plot, and a Deſign to ſeize the King at *Oxford*, *&c.* was not true; Page 796. and his Couſin anſwer'd, he had ſworn no ſuch Thing, and deſir'd he wou'd not believe it of him, and that he did not believe what *Colledge* had ſaid, for *Colledge* did not believe it to be true himſelf.

L. C. J. So that by your Diſcourſe it ſeems he did not deny but he had teſtify'd againſt Mr. *Colledge*, but that he did not believe there was any Proteſtant Plot.

Mr. Serj. *Jefferies*. Mr. *Colledge* thinks all the Proteſtant Intereſt concern'd in him.

Mr. *Sam. Smith*. He did not deny but he heard *Colledge* ſpeak theſe Words he ſwore, but he ſaid he did not believe him.

Col. If he knew of no Proteſtant Plot, it was unlikely I ſhou'd attempt ſuch a Thing my ſelf.

Mr. J. *Jones*. You might hope, by thoſe Words, and your poiſonous Pictures and Libels, to make them of your Party.

Mr. *Thomas Gardner* was call'd.

Col. What do you know concerning this Treaſon that is ſworn againſt me?

Gardner. I was at the *Rummer Tavern* in *Queen-Street*, about a Fortnight ago, with Mr. *Samuel Smith* and Mr. *John Smith*, whom they call *Narrative Smith*, and they were talking very warmly about *Colledge* and the Jury that acquitted him; and *John Smith* ſaid, that two or three of the Jury were Raſcals and Villains; and, ſays he, it is reported that I intend to ſham the Popiſh Plot and make a Proteſtant Plot, but I vow to God I know of no Proteſtant Plot, nor any Proteſtant

concern'd in a Plot but this *Colledge*, and I believe he will be made appear to be more a Papiſt than a Proteſtant at his Tryal. Says I, It ſeems improbable that ſuch a Man as *Colledge* ſhou'd ſeize upon the King, or provide 1500 Barrels of Powder, *&c.* Upon my Word, ſays Mr. *Smith*, (clapping his Hand upon his Breaſt,) when Mr. *Colledge* did ſay it, I did not believe a Word of it; and, upon my Faith, I believe *Colledge* himſelf did not believe it when he told me ſo.

Otes was call'd again.

Col. Mr. *Smith* charges me with ſpeaking treaſonable Words when Alderman *Wilcox* gave you a Treat at the *Crown* Tavern.

Otes. It was laſt Summer was Twelve-Month I was invited to dine with Alderman *Wilcox* at the

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Crown Tavern without *Temple-Bar*, and *Colledge* ſaid he was invited too; and he and I went together from the *Rain-bow* Coffee-Houſe to the *Crown* Tavern, and Mr. *Smith* either ſtaid behind or walk'd before us; when we came to the *Crown*, we enter'd into a Philoſophical Diſcourſe with one Mr. *Savage*, who was formerly a Romiſh Prieſt; we diſcours'd whether the Exiſtence of a God cou'd be prov'd by natural Demonſtration, and whether the Soul was immortal: This was our Diſcourſe at the Tavern; and Mr. *Smith* and *Colledge* had no Diſcourſe before: Therefore, when I heard Mr. *Smith* ſwear as he did at the *Old Baily*, I did, in my Conſcience, look upon him to be forſworn in that particular.

Mr. Serj. *Jefferies.* And he ſwears you are out in this.

Otes. And he talks of Alderman *Wilcox* contributing Money to buy Arms, and Powder, and Shot; but Sir *George Jefferies* knows the Alderman to be a Man of another Employment.

Mr. Serj. *Jefferies.* Sir *George* does not intend to be an *Evidence*, I aſſure you.

Mr. *T. Smith* was call'd.

T. Smith. I very well remember the Time when Alderman *Wilcox* gave Mr. *Otes* and ſome other of his Friends a Treat at the *Crown* Tavern; I was there all the Time, and there were not any treaſonable

ſonable Words ſpoke; for the Room was a ſmall Room and our Company fill'd it, ſo that any Man might eaſily hear all that was ſaid; I remember there was ſome Diſcourſe between Dr. *Otes* and Mr. *Savage* about ſome Points of Philoſophy and Divinity, but I'm confident *Colledge* ſaid nothing at that Time, for I obſerv'd he ſet himſelf down at the Table and fell aſleep.

Mr. Attorney. Did you never hear *Colledge* ſpeak any ill Words of the King?

T. Smith. Never in my Life.

Mr. J. *Jones.* Did he never deliver you any of thoſe Pictures?

T. Smith. No, Sir, he never did.

Mr. J. *Jones.* Can you tell ſo long ago, not only what you ſaid and did your ſelf, but teſtify to all other Mens Actions that were in the Rome.

T. Smith. I don't ſpeak of all that was done; but I ſay I remember no ſuch Thing that was ſaid, and I believe no ſuch Thing was ſaid, and I have given my Reaſons why: And whereas Mr. *Colledge* is charg'd with providing Arms to go to *Oxford*, I have known him theſe three Years, and know that he uſually rode with a Brace of Piſtols before him; I have ſeveral Times borrow'd his Horſe with his Piſtols, and have formerly ſeen a Suit of Silk Armour of his, which he ſaid he provided againſt the Papiſts, for he expected to have a Bruſh with them. Page 798.

Col. It was Silk Armour only for the thruſt of a Sword, I had but one Suit, but one Caſe of Piſtols, and one Horſe, and they were intended only againſt the Papiſts; in Caſe they ſhou'd make a Diſturbance; and truly, by the Grace of God, I ſhou'd not have been the laſt Man then; but I perceive whatever was provided for that Purpoſe, they wou'd have it believ'd was provided by the Proteſtants againſt the King and the eſtabliſh'd Government: But I hope the Court and the Jury obſerve there were no new Arms provided, only what I had a great while ago.

Colledge ſays he provided his Arms to defend himſelf againſt the Papiſts.

Sam. Otes was ſworn.

Col. Was you at the Dinner which Mr. *Wilcox* gave your Brother, and did you hear any treaſonable Diſcourſe among us?

Sam. Otes. I was at that Dinner, and you, and I, and my Brother went together; and you was ſaying, in a jocoſe Way, when we came out of the Coffee-Houſe, Come, Doctor, I will go with you and be one of your Guard, and my Brother ſaid, ſo you may if you pleaſe; and there was nothing of treaſonable Diſcourſe between us, or any Cabals from the Time of going to Dinner; we came into the Room juſt as Dinner was going into the Room, as I remember.

Mr. Serj. *Jefferies.* What did they talk of?

S. Otes. Nothing but Matter of common Diſcourſe, of Eating and Drinking, and Country Affairs; ſeveral of them had Lands in the Country, and they were talking of theſe Things.

Mr. Serj. *Jefferies.* Were there no Diſputations in Divinity or Philoſophy?

Sam. Otes contradicts the Priſoner's other Witneſſes.

S. Otes. None at all.

Mr. Serj. *Jefferies.* Why, did not Dr. *Otes* and Mr. *Savage* talk pleaſantly of two great Queſtions in Divinity, the Being of a God, and the Immortality of the Soul?

S. Otes. There was not a Word of that, only common Diſcourſe; I ſate at the Table with them.

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Mr. Solicitor. Was it before Dinner or after that Mr. *Colledge* fell aſleep?

S. Otes. He was not aſleep all the while, as I remember.

L. C. J. It is impoſſible to give an Account of all that paſs'd ſo long ago.

Col. Did Mr. *Smith*, and you, and I, go together?

S. Otes. You and I, and my Brother, went together, and Mr. *Smith* follow'd us; and whereas Mr. *Smith* charges Mr. *Wilcox* with ſpeaking ſuch Words, he did not ſpeak five Words all the Time he was there; he did not ſtay a quarter of the Time; he had a Son ſick in the Country and was going thither.

Mr. *Bolron*

Mr. *Bolron* appear'd.

Col. What can you ſay of *John Smith*?

Bolron. As Mr. *Smith* and Mr. *Mowbray* and I were travelling from *York* to *London*, in *July* laſt, Mr. *Smith* aſk'd me if I remember'd the Diſcourſe that paſs'd between Sir *John Brooks* and me at *Ferry Bridge*, when we came to *London* before; I aſk'd him what Diſcourſe, he ſaid, That Sir *John Brooks* ſaid there wou'd be Cutting of Throats at *Oxford*, and that the Parliament went provided, ſome with eight, ſome with ſix, and ſome with four Men; and that there was a Conſult at *Grantham*, wherein it was reſolv'd, that it was better to ſeize the King than to let him go on; and Mr. *Smith* ſaid, he had given an Account of it to the King, and if I manag'd rightly againſt my Lord *Shaftsbury* and *Colledge* he wou'd make me for ever; and he wou'd have perſwaded me to have given Evidence of Sir *John Brooks*'s Diſcourſe, and did tell me I muſt ſay ſo and ſo, for if we did not agree it wou'd ſignify nothing: But, my Lord, I know nothing of the Matter, I never heard any one ſpeak of it but Mr. *Smith*.

Bolron call'd to take off *Smith*'s Evidence.

Mr. Attorney. When did you diſcover this?

Bolron. I diſcover'd it to my Lord Mayor the Beginning of laſt Week.

Mr. Serj. *Jefferies.* Thou art ſuch a Diſcoverer—

Col. Pray, Sir *George*, don't make your Flouriſhes upon him; he has been an Evidence againſt the Papiſt as well as Mr. *Smith*.

Mr. Serj. *Jefferies.* He was an Evidence, but never had the Fortune to be believ'd.

Mr. Attorney. Have not you ſeen *Rary-ſhow*, did not you ſhow it at *Oxford*?

Bolron. I have ſeen *the Character of a Popiſh Succeſſor*, but I never ſaw *Rary-ſhow*. Page 800.

Mr. *Charlet*, M. A. of *Trinity College*, was ſworn.

Mr. Serj. *Jefferies.* Had you never any Diſcourſe with that Gentleman?

Bolron. Never in my Life.

Mr. Serj. *Jefferies.* Mr. *Charlet*, Do you know this Perſon?

Mr. *Char.* I was at the new Coffee-Houſe by the Schools, when the Parliament ſate here, with

one Mr. *Daſhwood* and Mr. *Box*, and hearing ſome of the Evidence were there, we deſir'd their Company, and Mr. *Bolron* was one of them, and ſhew'd us the Picture of the *Tantivies* and the *Towzer*, and told us they were made by *Colledge*, and that he was a very ingenious Man.

Bolron. The Character of a Popiſh Succeſſor I have ſeen, but not the other; I never ſhew'd any ſuch Thing: And as for *Bryan Haynes*, I have heard him, ſeveral Times, ſay he knew nothing of a Popiſh Plot, or Preſbyterian Plot, but if he was to be an Evidence, he wou'd ſwear any Thing to get Money; he wou'd be a Papiſt to Day, and a Preſbyterian to Morrow; he wou'd be of that Party that was ſtrongeſt, he wou'd never die for Religion.

Mr. *Monbray* was call'd.

Col. Pray, Sir, do you know *Narrative Smith*, and what do you know of him?

Monbray. Upon our Journey to *London* he was diſcourſing of the illegal and arbitrary Proceedings of the two laſt Parliaments, and particularly of thoſe Votes, That whoever ſhou'd lend the King Money upon the Crown-Lands, or adviſe the King to diſſolve the Parliament, were Enemies to the King and Kingdom; ſays he, theſe are Signs of arbitrary Power, and certainly they deſign to take off the King: Then he proceeded to aſk me concerning Sir *John Brooks*'s Diſcourſe when he came up before, and much importun'd me to ſay that Sir *John Brooks* did affirm there wou'd be Cutting of Throats at *Oxford*, and that the King was to be ſeiz'd there: And when I told him I did not come up with Sir *John Brooks*, nor had no Acquaintance with him, and ſo cou'd have no Pretence to depoſe this, he apply'd himſelf to *Bolron*, and importun'd him to do the ſame: And he aſk'd me what Parliament Men I came up with, and if they thought of juſtifying their Votes, or wou'd give the King no Money, and ſtood upon the Bill of Excluſion; for, he ſaid, this was Pretence enough for any Man to ſwear there was a Deſign againſt the King, and that the King was to be ſeiz'd at *Oxford*; And he wou'd have

Thoſe who ſhou'd lend the King Money voted Enemies to the Kingdom.

tempted

tempted me to ſwear the ſame againſt my Lord *Shaftsbury*, and he ſaid it wou'd be well if it did appear on *Colledge*'s Tryal at *Oxford*, for 'twas a Thing of Conſequence; that the Popiſh Plot was thrown out of Doors, and no Man was look'd upon that ſpoke of it.

Mr. J. *Jones*. Was this in the Preſence of Mr. *Bolron*?

Mowbray. No: When he found I was not for his Turn, Mr. *Bolron* rode up to us, and apply'd himſelf to him.

Mr. Serj. *Jefferies*. Was it after the 3d of *Auguſt* you had this Diſcourſe with Mr. *Smith*? Page 801.

Mowbray. Yes, 'twas after we ſet out.

Mr. Serj. *Jefferies*. You are ſure of this?

Mowbray. Yes.

Mr. Serj. *Jefferies*. Why, *Bolron* ſays 'twas the 25th of *July* you lay at ſuch a Place, and you talk of the 3d of *Auguſt*.

Mowbray. See, Sir, I will look in my Almanack, it is all ſet down there—But I find I am miſtaken; here it is, we came out the 24th of *Auguſt*, and came to *London* the 27th.

Col. He was miſtaken, but his Almanack is right.

L. C. J. He ſpeaks raſhly, that's the beſt that can be ſaid: Why did not he refer to his Almanack?

Mr. Serj. *Jefferies*. And ſtill we have loſt a Day, for your Almanack ſays it was the 27th you came to Town, and *Bolron* ſays 'twas the 28th. You was a Witneſs, I think, at Sir *Miles Stapleton*'s Tryal: Did the Jury believe you then?

Mowbray. They acquitted Sir *Miles Stapleton*.

Col. That's nothing to the Purpoſe, for *Smith* was a Witneſs there too.

Bolron's Wife was call'd.

Col. Pray, what can you ſay of Mr. *John Smith*?

Mrs. *Bolron*. Within theſe three Weeks, ſince *York* Aſſizes, he ſent for my Huſband and *Mowbray* ſeveral Times; ſomething he wou'd have had them concern'd in, and now and then they have gone to him, and ſometimes they wou'd not go, for

for they knew his Buſineſs; they had diſcours'd with him, as they ſaid, upon the Road.

Mr. *Everard* appear'd.

Page 802. *Everard*'s Evidence of his being apply'd to, to give Evidence of a Whig Plot.

Col. What do you know of Mr. *Smith*'s Contrivance againſt me?

Everard. I was to ſee Mr. *Smith* lately, and he ſaid, he knew of no Preſbyterian or Proteſtant Plot; and when the Bill was brought in againſt my Lord *Howard*, he ſaid, he wonder'd how my Lord cou'd be guilty; and he ſuppos'd that himſelf and I were join'd as Evidence to that Jury, only to give a Countenance to the Evidence; for, ſays he, I have nothing material to ſay.

Col. Have not you and Juſtice *Warcup* had ſome Diſcourſe? What wou'd he have had you done?

L. C. J. That can't be material; here is nothing of Mr. *Warcup* in this Tryal.

Col. My Lord, the Papiſts deſign to make a Proteſtant Plot to turn off their own; and if there was no Preſbyterian Proteſtant Plot, no Body to join with me, I cou'd not do it my ſelf. 'Tis impoſſible I ſhou'd entertain a Deſign of ſeizing the King my ſelf, and improbable I ſhou'd ſpeak it. Now, my Lord, this Man was ſolicited to come in for an Evidence of ſuch a Plot.

Everard. Juſtice *Warcup* wou'd have perſwaded me to have ſworn, againſt ſome Lords, a Preſbyterian Plot, but I know of no ſuch Thing.

Mr. Serj. *Jefferies.* My Lord, let us have no Diſcourſes that concern third Perſons here.

Mr. J. *Jones.* Muſt Juſtice *Warcup*'s Fame be traduc'd behind his Back, in the Face of the Country when 'tis nothing to the Cauſe before us?

Col. My Lord, 'tis very material for me, that he ſpeak out. Here is a Deſign of the Papiſts to turn a Plot upon the Proteſtants; they begin with me, and if they have my Blood, who may feel the Effects of it next I can't tell: And my Lord *Macnamarra* told me, that Man wou'd have ſeduc'd him to have retracted his Evidence.

L. C. J. *Macnamarra* is no Evidence againſt you neither.

Col. He was an Evidence againſt me at the finding the Bill; and by ſome Trick or other they have

have laid him aſide: I deſire Mr. *Everard* may tell what he knows.

L. C. J. He does not ſay Mr. *Warcup* wou'd have had him ſwore what was not true.

Evidence permitted to be given of what one ſaid who was not concern'd in the Proſecution.

Everard. But Mr. *Warcup* ſaid there was certainly a Preſbyterian Plot, and that ſome of the Proteſtant proteſting Lords muſt be in it; and ſaid, I muſt certainly know much of it, and ſaid I might ſafely ſwear it if I knew it.

Mr. J. *Jones.* What is this to the Purpoſe? Muſt Mr. *Warcup*'s Name be brought upon the Stage when he is not here to juſtify himſelf?

Here Mr. Warcup *came into the Court and deſir'd to juſtify himſelf; but the King's Counſel ſaid, it was not material, and wav'd the Matter.*

Col. What do you know of any of the others?

Everard. About three Weeks ago I was aſking *Haynes* how he cou'd teſtify what he had done, when he had ſaid before he knew nothing of it; and he anſwer'd, The Truth was, he cou'd not ſay much to excuſe himſelf, but his Wife was reduc'd to that Neceſſity ſhe begg'd at *Rouſe*'s Door and he wou'd give her nothing, and that mere Neceſſity drove him to it; and beſides, ſays he, Self-preſervation put me upon it, for I was brought in guilty when I was taken up, and I was oblig'd to do ſomething to ſave my Life.

Thomas Parkhurſt appear'd. Page 803.

He depos'd, That about the latter End of *November* he went with Mr. *Dugdale* to Dr. *Tongue*, who lay at Mr. *Colledge*'s, and that they diſcours'd of the Times, and the Dangers of the Papiſts; and *Colledge* took down a ſteel Hat, he had, and ſaid he had a quilted Coat of Armour in his Houſe, and a Blunderbuſs, and two Piſtols, and ſaid he was provided for the Papiſts if they did come to make a Diſturbance.

L. C. J. This does not contradict Mr. *Dugdale* at all.

Mr. *Symonds* appear'd.

Col. Pray, what do you know of Mr. *Dugdale*?

Symonds. I can ſay no more than Mr. *Parkhurſt* did; That being at *Richard*'s Coffee-Houſe with Mr. *Dugdale*, he was ſaying he was ſent for by

Dr.

Dr. *Tongue*, and ſeem'd to apprehend ſome Danger in going alone; and we took Coach and went with him to Dr. *Tongue*, who lodg'd at Mr. *Colledge*'s, and ſpeaking of their Fears of the Papiſts, *Colledge* ſhew'd his Silk Coat of Mail, and Arms, and ſaid, Let the Papiſt Rogues begin when they will, I am ready to defend my ſelf for one: This was in *November*, I take it.

Col. So then theſe Arms they charge me withal were provided before *Chriſtmas*.

Mr. *Yates* appear'd.

Col. Pray, what do you know concerning *Dugdale*?

Yates. He deſir'd me to make a Piſtol, which he ſaid he deſign'd to preſent to Mr. *Colledge*, and he ſaid he gave it him as an Acknowledgment, Mr. *Colledge* having ſeveral Times let him have the Uſe of his Piſtols. I ſaid, I believ'd Mr. *Colledge* was a very honeſt Man, and ſtood up for the Good of the King and Government. Mr. *Dugdale* reply'd, he believ'd he did, he knew nothing to the contrary. This was about three Weeks after the Parliament ſate at *Oxford*.

Page 804. Mr. *Clayton* appear'd

Col. My Lord, I lay at his Houſe: Pray, what Time did I come to *Oxford*, and what Arms did I bring?

Clayton. You came two or three Days after the Parliament ſate there, and you had a Sword and a Pair of Piſtols in your Houlſters, which was all I ſaw.

Col. Mr. *Dugdale* ſays he was with me at your Houſe. Did you ſee him with me there? He ſays too, we had Mum at your Houſe.

Clayton. I have ſeen him at my Houſe, but not with you, nor did I ever ſell any Mum.

Thomas Deacon was call'd.

Colledge calls Witneſſes to his Character.

Col. Pleaſe to give the Court an Account what you know of me?

Deacon. He was born at *Watford* in *Hertfordſhire*, where I live; I have known him from his Youth, I never knew but he was a very honeſt Man; he frequented and kept to the Church of *England*, and paid every Man his own.

Mr. At-

Mr. Attorney. How long is it ſince he left that Place?

Deacon. I think, about 18 Years.

Col. 'Tis 14 Years; but I have been in your Country lately.

Deacon. He uſed to come down once or twice a Year: And I have heard him declare himſelf againſt the Papiſts very much.

L. C. J. Did you never hear him talk againſt the King or Government?

Deacon. No, never in my Life.

Mr. *Whitacre* appear'd.

He depos'd, That he knew the Priſoner when he liv'd at their Town of *Watford*, and he was of good Behaviour, and a good Church-man then; and he heard the ſame of him in the Pariſh where he now liv'd in *Black-Fryars*: He was no Jeſuit or Papiſt, he ſaid he dare aver, but flouted them and their wooden Gods; for he cou'd never endure that Perſwaſion: That he was a Soldier under his Majeſty at the *Chatham* Buſineſs, and he never heard him ſpeak a Word againſt the King or Government: That the Priſoner's Mother liv'd at *Watford*, and his Children went to School among them, and he uſed to come down to ſee them three or four Times a Year.

Mr. *Neale* appear'd. Page 805.

He depos'd alſo, That the Priſoner liv'd formerly at *Watford*, went to Church, *&c.* That he convers'd with him when he came down thither, and particularly the laſt Spring, and never heard him ſay any Thing againſt the King or Government.

Mr. *Remmington* and Mr. *Tanner* alſo appear'd, and gave the Priſoner the ſame Character.

Peter Norreys was call'd.

Col. Do you know any Thing concerning Mr. *Smith*?

P. Norreys. I was once at the *Hercules* Pillars with Sir *W. Waller*, *Macnamarra*, Mr. *Joy*, Mr. *Lewes*, *Macnamarra*'s Brother, and Mr. *Smith*, and we were talking of the Parliament at *Oxon*; and Sir *W. Waller* ſaid, moſt Parliament Men were afraid to go to the Parliament: Truly, ſaid Mr. *Smith*, I hope they

they will be provided to go, if they do go; Sir *W. Waller* ſaid, he and his Friends ſhou'd be provided; and *Colledge* ſaid, he wou'd be provided too, and wou'd go with them; and when Sir *William* offer'd him a Horſe, he ſaid he had one of his own; and this was all the Diſcourſe of the Company that Night.

Col. This wou'd be material Evidence againſt ſome other of the Confederates; but they are not examin'd, for ſome Reaſons.

T. Norreys appear'd.

Page 806.

He depos'd, That he had convers'd much with Mr. *Colledge*; that he always expreſs'd himſelf againſt the Papiſts, but he never heard him ſpeak againſt the King or Government.

Col. As to the Papers charg'd upon me, I know nothing of them; nor cou'd I ever draw a Picture in my Life; and how the Paper call'd *The Rare-Show*, came to be found in my Houſe, the next Witneſs will clear.

Eliz. Hunt was call'd.

Col. Pray tell the Court how theſe Papers call'd *The Rare-Show*, came to be in my Houſe.

E. Hunt. A Porter brought three Bundles of Paper to my Maſter's when he was Abroad, and ſaid, that I muſt pay him for them, and I gave him Six-pence, and he left the Papers.

L. C. J. How long was it before they were ſeiz'd?

E. Hunt. About ſeven or eight Weeks.

Colledge confeſſes the Pictures were in his Houſe.

Col. My Lord, I confeſs I ſaw the Papers, but I knew not from whence they came, or ever intended to meddle with them. What have you to ſay more?

E. Hunt. I went to receive the Money Mr. *Dugdale* ow'd my Maſter, and he putting me off, I told him I thought 'twas hard he ſhou'd keep my Maſter's Money and ſwear againſt his Life too; and he ſaid there was a great deal to do about his Swearing againſt my Maſter, more than needs; for, as he hop'd for Salvation, he did not believe Mr. *Colledge* had any more Hand in the Conſpiracy againſt his Majeſty than the Child unborn.

Dug-

Dugdale. As I hope for Salvation, I did not ſay ſo.

E. Hunt. Upon my Salvation, 'tis true what I ſay.

L. C. J. Did you tell her you had nothing a- Page 807.
gainſt her Maſter's Life?

Dugdale. I cou'd not ſay I had nothing againſt her Maſter: She aſk'd me to write down what I had ſaid, but I told her I knew not what was Treaſon, that muſt be referr'd to the Court.

Sarah Goodwin appear'd.

She depos'd, That the Saturday after her Brother *Colledge*'s Confinement, there came a Waterman to her Brother's Houſe, and deſir'd a Handful of Shavings, and that he went away, and return'd ſoon after, with three of the King's Meſſengers, and they made Enquiry after Papers, and ſhe told them ſhe knew of none, and gave them Leave to ſearch; and after they were gone, ſhe aſk'd the Maid and her Brother's Son if they knew of any Papers? And they told her there had been ſome Prints left there by a Porter, but they did not know what they were, nor who they belong'd to; that upon this, ſhe took the Prints and carry'd 'em out of the Houſe; and ſhe found a ſmall Paper-Book and ſome Writings, (which ſhe now ſuppoſes to be dropp'd by the Waterman) and ſhe put them among the Prints, and gave them to her Brother-in-Law, *George Spurs*, and he convey'd them to his Houſe in the Country. Page 808.

L. C. J. Mr. *Atterbury*, Let us know how theſe Papers were found? She talks of a Waterman that came in pretending to fetch Shavings, and dropp'd ſome of them.

Atterbury. Upon my Oath, it was not ſo: A Waterman did bring me and my Fellows indeed, but he follow'd us into the Yard. I was order'd to ſearch for Papers, and found the firſt, but cou'd not find thoſe I chiefly look'd for.

Sewel. My Lord, I took the Papers at *Spur*'s Houſe at *Buſhy*; Mrs. *Goodwin* carry'd one half of them out of the Houſe to *Spur*, and the Maid carry'd out the other.

Mrs.

Mrs. *Goodwin.* I carry'd them out of the Houſe, and deliver'd them to *Spur.*

L. C. J. Then they were in the Houſe.

Mrs. *Goodwin.* They were in the Counting-Houſe.

Col. They carry'd them into the Country, and handed them from one to another; I know not what they have done with them; and, my Lord, I declare upon my Life, I know neither the Printer nor the Author.

L. C. J. Have you any more Witneſſes?

Col. No, my Lord.

Mr. Attorney. We ſhall examine one or two more, my Lord.

Col. If they bring any new Evidence, I hope I may have Leave to contradict them.

L. C. J. You ſhall be heard to them you need not doubt.

Serj. *Jefferies.* I think we need not; Time enough has been ſpent already.

Colledge objects to the King's Counſel's whiſpering together.

Col. No Whiſpering, good my Lord.

Mr. J. *Jones.* May not the King's Counſel confer together?

Col. Not to whiſper, they ought to ſpeak out.

L. C. J. They ought not to ſpeak privately to the Jury, indeed.

John Shirland was ſworn.

Mr. Attorney. What do you know of *Bolron?*

Shirland. *Bolron* offer'd me Ten Pounds and a Horſe, to ſwear againſt Sir *Miles Stapleton.*

Mr. J. *Jones.* Did you ever ſee this Man, *Bolron?*

Page 809.

Bolron. Yes, he was to have been a Witneſs againſt Sir *Miles Stapleton*, and pretended he was ſuborn'd by Sir *Miles*, or ſome of his Friends: He is one who lives by his Shifts, and has been whipt in *Bridewel.*

Shirland. You drew your Sword upon me once, becauſe I wou'd not do as you wou'd have me.

Bolron. I profeſs, it is not ſo.

Mr. Attorney. Mr. *Smith*, What do your know of *Bolron?*

Smith. He told me he cou'd ſay as much againſt *Colledge* as any one, but if I wou'd ſpeak for him, he

he wou'd evidence againſt Sir *John Brooks* for a Diſcourſe at *Ferry-bridge*.

Mr. *Bolron*. I never heard any ſuch Thing.

Smith. No Man in your Country will believe you.

Col. Nor they wou'd not believe you neither, it ſeems.

L. C. J. Do you call any more Witneſſes?

Serj. *Jefferies*. I think we need not.

L. C. J. Then, Mr. *Colledge*, you may make your Obſervations on the Evidence.

Colledge's Obſervations on the Evidence.

Col. My Lord, I have nothing but Innocence to plead; no Flouriſhes to ſet off my Defence; I cannot take the Jury or the Court with Oratory; but I declare, in the Preſence of Almighty God, that what is ſworn againſt me concerning providing Arms, or a Deſign to ſeize his Majeſty, or to rebel againſt the eſtabliſh'd Government, is all a Fiction, I never had ſuch a Thought; it is true, they have ſworn deſperately againſt me, but I think it appears they have contradicted one another: It has been prov'd this was a Deſign, and that they were tamper'd withal, that they complain'd of their Poverty, and wanted Maintenance; and confeſs'd they were tempted to come over and ſwear againſt Proteſtants, and they have begun with me; but I hope the Jury obſerve I have ſufficiently contradicted their Evidence. And is it poſſible to imagine, if I had a Grain of Senſe, that I ſhou'd diſcover myſelf to ſuch a one as *Haynes*, an *Iriſhman*, and ſpeak all that Treaſon he has gallop'd thro', the firſt Time I ſaw him? Every Witneſs, I think, has been confuted by Men of Principles, Perſons of Integrity and Honeſty, (tho' moſt of them were unknown to me) and have offer'd their Teſtimony voluntarily; and there is no Probability they ſhou'd come and atteſt a Falſhood for me, who am a Stranger to them, for nothing. My Lord, I am a Proteſtant, and have been a Lover of the Church of *England*, and profeſs the ſame Faith, and never had a Prejudice againſt any Churchman, but ſuch as promote the Intereſt of the Papiſts, for ſuch there are amongſt them: I confeſs, I have heard ſome Diſ-

ſenters,

ſenters, and have found them honeſt, juſt, and pious, free from Oaths and Debauchery, and unlike ſome who call themſelves of the Church of *England*, and lead ſuch Lives, that no Credit can be gain'd to the Church by them. My Lord, I have been a hearty Man againſt the Papiſts, and for the Parliament, and am ſorry any Man ſhou'd create Miſ-underſtandings between the King and Parliament. I always thought I ſerv'd my King when I ſerv'd the Parliament: I had the Honour to be entruſted by them; and, upon that Account,

Page 810.

I came voluntarily down hither at my own Expence; and ever ſince the Diſcovery of the Plot, have done my utmoſt to come at the Bottom of it; and have encourag'd thoſe who diſcover'd thoſe Villainies againſt the Life of the King, and againſt our Religion and Government: And theſe Men who ſwear againſt me, were they who uſed to follow me for Bread; they uſed to ſay they thought it hard they came to ſave our Lives, and we let them want Bread; and I have collected Money for them; and ſometimes they thought fit to petition the Common-Council for Relief; ſometimes they have pretended to me they wou'd make farther Diſcoveries of the Popiſh Plot; and the firſt Time I ſaw *Haynes*, was upon ſuch an Account in *March* laſt: He ſaid he wou'd diſcover a Piece of Roguery againſt my Lord *Shaftsbury*'s Life, and I went with him and Capt. *Brown* from *Richard*'s Coffee-houſe to the *Hercules* Pillars, where he told us of that Deſign to deſtroy the Parliament at *Oxford*, and of an Army that was to land in the *North*, and another in *Ireland*, and the Duke of *York* was to lead them: At another Time, *Haynes* came to me, under Pretence of diſcovering the whole Deſign concerning the Murder of Sir *E. Godfrey*, and ſaid, if my Lord *Shaftsbury* wou'd engage to get his Pardon, he wou'd diſcover the whole Truth: When I acquainted my Lord with it, ſays he, Theſe *Iriſhmen* have confounded all our Buſineſs; thou and I muſt have a Care they do not put a Trick upon us. This may be a Trick of the Papiſts to ruin us: Afterwards, they brought Mrs. *Fitz-Harris* to my Houſe to confirm what they had

had told me; and *Haynes* said in my Yard, that he saw my Lord *Danby* come to the Chapel of *Somerset House*, when the Body of Sir *E. Godfrey* lay under the Altar.

Page 811: *Colledge* suggests that the Lord *Danby* was privy to the Murder of Sir *E. Godfrey*.

L. C. J. You ramble from the Matter; I wou'd have you keep to your Proofs, and make your Observations upon them; to tell us long Stories of what pass'd between you and others, and is not a whit prov'd, is not usual, or pertinent.

He is reprehended for scandalizing Persons without Proof.

Col. I thought it was to the Point, when this Man pretends to a Familiarity with me, to shew how this Acquaintance began.

Mr. J. *Jones.* Do you think this an Answer to what he proves upon Oath? Have you prov'd one Jot of this? Apply yourself to summ up the Evidence, and answer what is prov'd upon you, and speak as long as you can: But you must not tell Stories to accuse the Jury, that are not prov'd; this was never allow'd in any Court of Justice.

Mr. J. *Levinz.* You found Fault with Mr. Attorney for opening what you thought he cou'd not prove, but 'tis much worse in your Observations on the Evidence, to run out into Stories that have not been prov'd at all, after your Proof is past.

Col. I cou'd not prove this otherwise, than by *Joy*, who hath been sworn against me; and why my Oath, being an *Englishman* and a Protestant, shou'd not be taken as well as his, who is an *Irishman*, and has been a Papist, I know not.

L. C. J. You go upon that Ground, That your Word is to be taken; but no Justice cou'd be had against Malefactors, if the Word of the Accus'd was to pass for Proof to acquit him.

Col. My Lord, I knew not what they wou'd swear; I had not Witnesses in my Pocket to confront them; but as to *Haynes*, I had a Witness prov'd he own'd he was employ'd to make a Protestant Plot, and another that heard him swear, Damn him he wou'd swear any Thing against any Body for Money, for 'twas his Trade; and, my Lord, it is laid, that I was at *Oxford* the 10th of *March*: I desire that may be prov'd.

L. C. J. As to the Time mention'd in the Indictment, it is not material: If a Horſe be laid to be ſtol'n the Tenth, if it be prov'd the Priſoner ſtole it another Day, 'tis ſufficient.

Col. How does *Dugdale* know, that by the Word *Rowley*, I meant the King?

L. C. J. You may have him call'd again to clear this.

Dugd. The firſt Time I heard what *Rowley* meant, was from him. I aſk'd him what he meant by the Name of *Rowley*? And he ſaid, it was *the King*.

Col. Upon what Account did I explain it?

Dugd. It was when we were talking of one of the Pictures. You ſaid *Mack and Mac* was the Duke of *York*, and *Rowley* was the King.

Col. Upon what Picture was it that I explain'd *Rowley* to you?

Dugd. You have ſo many Pictures, I can't remember: I receiv'd Pictures of you twice at *Richard*'s Coffee-houſe; and at the *Green Dragon* you thruſt one into my Pocket; and Mr. *Baldwin* was by, and ſaid, You are ſo open you will come to be diſcover'd.

Col. I will be willing to die, if he, and I, and Mr. *Baldwin* were at the *Green Dragon* together; and I never ſaw *Raree-ſhew* before the Parliament was at *Oxford*.

Dugd. I don't ſay it was that.

Col. What Picture was it I gave you there?

Page 813. *Dugd.* I ſuppoſe it was one concerning the Biſhops, where you put Biſhop *Mew* kiſſing the Pope's Toe: You told me 'twas Biſhop *Mew* that had the Patch on.

Col. I put! Did I make it?

Dugd. You ſaid you was the Author.

Mr. J. *Jones.* Remember Mr. *Dugdale* was call'd up about the Expoſition of *Rowley*.

Mr. J. *Levinz.* You was in the right Way juſt now, in making Obſervations on the Evidence: Go on in that Way.

The Judges of Council with the Priſoner, in Matter of Fact, not in Matters of Law

Col. My Lord, I did not hear half that was ſaid, I hope your Lordſhip will remember it for me: You are my Counſel as well as my Judges.

L. C. J. In Matter of Fact, we are.

Col.

Col. As to what *Smith* ſays of the Diſcourſe between the Coffee-houſe and the Tavern where we din'd with Mr. *Wilcox*, it is not above a Bow-ſhot from one Place to t other, and he made it a quarter of a Mile's Diſcourſe, if I had had all the Talk; and Dr. *Otes* tells you too, that *Smith* ſwore he wou'd have my Blood; and *Smith* ſays, I ſhew'd him my Arms, and that they were to deſtroy the King's Guards; whereas I have had them theſe three Years, and he does not prove I had any Confederates; but on the contrary it has been prov'd, that he ſaid he did not believe there was any Proteſtant Plot, and that I ſaid it wantonly: And as for my being in Company with Capt. *Brown* and *Lewes*, they were Friends of my Lord *Howard*'s, with whom I came down to *Oxford*, and they lay at the *Chequer* where I did; and it is not ſhewn that we were in any Conſpiracy. Page 814.

Mr. J. *Jones.* You told the Witneſs at *London*, that they were ſuch Perſons.

Col. I was not acquainted with either of them a Fortnight, before I came down, however, I deſire your Lordſhip's Judgment, Whether what was done at *London* can maintain an Indictment at *Oxford.*

L. C. J. What you ſaid in *London*, is Evidence to maintain the Indictment here, and proves what your Intention was in coming down.

Col. Does my going down to *Oxon* become an Overt-Act, if I went upon ſome other honeſt Occaſion, tho' I had ſaid thoſe Words before?

L. C. J. If you came with a real Purpoſe to ſeize the King, that is an Overt-Act; and the Words before prove the Intention.

Col. As to the Evidence Mr. *Maſter* gives of a Diſcourſe with me in Mr. *Charlton*'s Shop, of the Parliament in 40, Mr. *Charlton* wou'd have done me Right if he were here: Mr. *Maſter*'s was ſaying that Parliament cut off the King's Head, and I ſaid they did not: Then we diſputed whether they began the War againſt his Majeſty: I ſaid it was the Papiſts, and that that Parliament was an honeſt Parliament, and minded the true Intereſt of the Nation; and that they were much of Page 815.

the ſame Opinion with the Parliament that ſate laſt at *Weſtminſter.*

L. C. J. But they are guilty of a Rebellion, and are declar'd Rebels by Act of Parliament ſince the King come in.

Mr. *Maſters* ſtood up again.

Col. Pray relate the Diſcourſe that paſs'd between you and I.

Mr. *Maſters.* You juſtify'd the late long Parliament, and ſaid they were a Parliament that did nothing but what they had juſt Cauſe for. Said I, *How can you be ſo impudent to ſay ſo, when they rais'd the Rebellion againſt the King and cut off his Head.* And you ſaid, *They did nothing but what they had juſt Cauſe for, and the Parliament that ſate laſt at* Weſtminſter *were of the ſame Opinion.*

Col. Did not I firſt ſay, that they did not begin the War or cut off the King, but the Papiſts did it.

Mr. *Maſters.* You wou'd have had it, the King begun the War. You did ſay in your Diſcourſe, the Parliament did not begin the War, or cut off the King's Head; and I think, you did ſay, Papiſts had a Hand in it. But you leave out the moſt material Part of our Diſcourſe, (*viz.*) That they did nothing but what they had juſt Cauſe for.

Col. It was always my Senſe, that the Parliament did not cut off the King's Head, for they were out of Doors long before that came to paſs.

The Parliament who began the War in 41, declar'd Rebels by Act of Parliament 13 *Car.* 2.

L. C. J. Don't let us mince the Matter: The War was a Rebellion on the Part of the Parliament, and was ſo declar'd by Act of Parliament; and if you argu'd at that Rate, it ſhews that you are a very ill Man; for you juſtify ſuch Things as wou'd lead us to the ſame Things again; and don't go about to palliate it *ad faciendum populum.*

Page 816.

Mr. J. *Levinz.* It was the Garbage of that Parliament, (the *Rump,*) that appointed the High Court of Juſtice, and they call'd themſelves the Parliament of *England*; and that Parliament it was that begun the War.

Col.

Col. My Lord, Mr. *Masters* is pleas'd to say this of me; but I thought no ill at that Time, nor did he seem then to understand it so. I know he talk'd violently and passionately with me, as he used to do, but I thought he was so much a Gentleman, that if I had spoken any Thing that had not become me, he wou'd have taken Notice of it. I desire the Jury will take the Discourse together, and it will appear I did not think the Parliament were concern'd in those Things, but were a Parliament that stood up for the Rights of the People: And if so, then the Parliament at *Westminster* were of the same Opinion: And, my Lord, I desire to know, if any Words, spoken six Months before I was charg'd with them, can be given in Evidence upon the 13th of the King.

L. C. J. As to that Part of the Statute that concerns Treasons, the Prosecution need not be within six Months; but the Indictment is founded also on 25 *Edw.* 3.

Col. And ought there not to be two Witnesses by the 25th of *Edw.* 3?

L. C. J. No; but another Statute requires two Witnesses, tho' one Witness to one Fact, and another to another Fact, at another Time, are sufficient to maintain the Indictment, as it was told you was resolv'd in the Lord *Stafford*'s Case by all the Judges.

Col. They prov'd Fact in that Case, as writing Letters, and offering Money to kill the King.

L. C. J. Read the 13th of the King, where Words are declar'd to be Treason. [*Which was done.*]

You see, that to compass or imagine the Imprisonment of the King, and to express it by malicious and advis'd Speaking, is Treason, when prov'd by two lawful Witnesses.

Col. What lies before the Jury, as done at *Oxon*, is supported only by a single Testimony.

Mr. J. *Levinz.* Nay! Mr. *Dugdale* and Mr. *Turbervile* both swear the same Thing, (*viz.*) your Design to seize the King at *Oxford*: And if it was requisite, the same Thing shou'd be prov'd to be said at the same Time by two Witnesses, the King must

Colledge justifies still there ought to be two Witneſſes to one Fact *Page 817.*

muſt be very unſafe; for the Conſpirator wou'd be ſure never to ſay the ſame Things before two Witneſſes at the ſame Time.

Col. If the King is not ſafe upon thoſe Terms, no private Man is ſafe the other Way: All Society and Converſation is at an End.——— However, I inſiſt that the Teſtimony of theſe Men is invalidated by ſubſtantial Perſons: I am wholly innocent: The Jury are my Judges, and I beſeech them, as they will anſwer me at the Great Day of Judgment, that they will do me Right.———If a Man ſhall be ſworn againſt by ſuch Fellows, Papiſts, *Iriſhmen*, and ſuch as have declar'd themſelves Traitors, and to have been in all Manner of Rogueries, Plots, and Murders, no Man can be ſafe: I hope your Lordſhip will inform the Jury rightly; and that the Jury will conſider whether there has not been more Occaſion of talking of late, and whether a Slip of the Tongue ought to be conſtru'd a malicious advis'd Speaking, I mean my Diſcourſe with Mr. *Maſters*, who talk'd with me, as hot as Fire, at that Rate I told you.

Colledge concludes his Defence.

I deſire the Jury will take all into their Conſideration: I expect a Storm of Thunder from the learned Counſel: I am unlearn'd, and muſt defend myſelf without Counſel. I know not whether this be the Practice in any Nation; but it is hard, that I, who am an illiterate Man, muſt ſtand here all Day, not qualify'd to write or ſpeak, and they being many and learned in the Law, ſhall take all Advantages againſt me a ſingle Perſon. I take God to Witneſs, I am as innocent as any Perſon upon Earth; and beſeech you not to be frighten'd nor flatter'd. Do according to your Judgments and Conſciences; you are my Judges, both as to Law and Fact; you may acquit or condemn me, and my Blood will be requir'd at your Hands. The Lord Almighty direct you to do me Juſtice, and I aſk no more.

Mr. Solicitor. Gentlemen of the Jury, the Fact charg'd upon Mr. *Colledge*, is a Deſign to kill the King: The Manifeſtation of that Deſign, is his preparing Arms for that Purpoſe, and coming down to *Oxford* to ſeize the King.

Col. Is this Design or Conspiracy prov'd? Do not let him do me Wrong, my Lord.

L. C. J. We have had a great deal of Patience with you, because we consider your Condition; and had rather hear too much than be hard upon you; and now we have heard you, you must have Patience to hear what the King's Counsel observe.— *Then Mr. Solicitor, having repeated Part of the Evidence, proceeded to make his Observation on it, and answer the Objections made by the Prisoner.*

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Mr. Solicitor's Observations on the Evidence.

Mr. Solicitor. As to that Objection of the Prisoners, that he had his Arms long before, and that they were not provided for this Purpose: Gentlemen, We don't pretend to prove when this traitorous Design began, and how long it has been hatching; but whether he prepar'd them against that Time or not, is not material; for if he had them first innocently, if he afterwards design'd them for such a Purpose, and shew'd them in a Readiness for it, that is a sufficient Evidence to prove this Treason: And it is prov'd, that he said he came down in Expectation that something wou'd be done, and came down accordingly in an Equipage, not suitable to his Profession, arm'd on Horseback with a Case of Pistols, Things that did not at all become a Carpenter or a Joyner to travel with.

Col. My Lord, Let me not be overborn; there is scarce a Carpenter, or Joyner, or Poulterer, in *London*, but has Pistols when he rides.

L. C. J. We must not suffer this: We had so much Patience with you, that we expect you shou'd be quiet now, and not intercept the Counsel.

Mr. J. *Jones.* Did not you ramble from the Matter, and yet we suffer'd you to go on.

Mr. Solicitor. As to that Objection, that he cou'd not talk so much between the Coffee-house and the Tavern as the Witnesses testify'd, when he went to *Wilcox*'s Dinner, if you consider how Busy a Man he was, and how ready at talking Treason, you will not wonder, if he talk'd much more than that.

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And as he came down with an Intent to seize the King, and expected what he call'd *Some Sport*, so he did endeavour to begin the Sport by that

Quarrel in the Lobby of the Houſe of Lords, with *Fitz-Gerald* ; for from little Matters, ſometimes, great Things ariſe ; and when Men (as he himſelf ſaid) were poſſeſs'd with an Expectation that the Parliament ſhou'd be attack'd, a little Matter might have begun the Commotion ; and what End it might have had, no Man knows. And as to that Objection : That this is a Popiſh Deſign to throw the Plot upon the Proteſtants ; the Witneſſes that have prov'd this Treaſon, are Men of Credit ; Men who gave Evidence againſt the Popiſh Plotters, and ſtill ſtand to that Evidence : They are Men whom the whole Nation have given Credit to : It was upon the Credit of *Dugdale* and *Turbervile* the Parliament impeach'd the Lord *Stafford :* And after ſo ſolemn a Tryal, where all the Objections that cou'd poſſibly be made were made ; and my Lord *Stafford* was found guilty upon their Evidence, and dy'd upon the Credit of theſe Men, the Priſoner muſt not pretend to blow all off with that frivolous Objection, that theſe Perſons were in a Deſign of throwing a Plot upon the Proteſtants : And what Sort of a Proteſtant he is, (tho' he wou'd have it believ'd he is ſo popular for his Religion, that he has obtain'd the Name of the *Proteſtant-Joyner*) his Actions beſt diſcover : If the Proteſtant Religion allow a Man to vilify the King, to arraign the Government, and throw off all Manner of Allegiance, then is the Priſoner a Proteſtant : But if the Papiſts can with no greater Infamy to the Proteſtant Religion, than that it ſhou'd juſtify the late horrid Rebellion, and ſuch Principles as this Man in his many ſcurrilous Libels ſeems to do, and wiſh nothing more than to ſee this Kingdom in Confuſion, and the Church of *England* deſtroy'd, Mr. *Colledge*, while he is acting this Part, does very ill to call himſelf a Proteſtant.

Page 820.

As to the Evidence that *Lun* has given, to take off Mr. *Haynes*'s Credit, it ſeems ſtrange that *Haynes* ſhou'd ſay ſuch Things to *Lun* at firſt Sight ; nor is the Nature of that Evidence ſufficient to take off *Haynes*'s Credit, who is upon his Oath, and eſpecially ſeeing *Haynes* is ſupported by three

other

other Witneſſes, whoſe Credit had not been impeach'd, unleſs by Dr. *Otes*.

And that Dr. *Otes* ſhou'd come to vilify the Credit of thoſe Men who receiv'd Credit in his Diſcovery of the Popiſh Plot, by the Teſtimony of theſe very Men: That he ſhou'd take up thoſe Arguments the Papiſts had maliciouſly ſuggeſted, but were never able to make out, looks as if the Doctor was again returning to St. *Omers*.

Page 821. Serj *Jefferies's* Obſervations.

Serj. *Jefferies*. As to what the Law is in this Caſe, (with Mr. *Colledge*'s Favour) my Lords, the Judges are Judges of the Law, as you are, Gentlemen, in Point of Fact: And they have told you, that where a Treaſon is in ſeveral Counties, and one Witneſs ſpeaks to a Fact in one County, and another to a Fact in another County, if they ſpeak to the ſame Treaſon, their Teſtimony is ſufficient; as was reſolv'd in the Caſe of *Gavan*, who was try'd in *London*, and Evidence given of Facts both in *London* and the Country.

Page 823.

And, Gentlemen, I put it upon your Conſciences, whether, upon the bare Affirmation of Mr. *Otes*, you will convict three Men of Perjury, upon whoſe Teſtimony the Lives of ſo many have been taken away, and, as we Proteſtants believe, juſtly: And, Gentlemen, beſides the poſitive Evidence of theſe Men, it is probable that they ſhou'd come voluntarily and tell Mr. *Otes* they were all forſworn and brib'd off, as he wou'd have you believe?

And as to this being a Plot againſt the Proteſtants, I hope the whole Intereſt of the Proteſtant Religion is not involv'd in the Priſoner at the Bar: The Queſtion is not, Whether there be a Preſbyterian or a Proteſtant Plot, (we declare we know of none) but the Queſtion is, Whether the Priſoner at the Bar has ſpoken ſuch and ſuch Words, and done ſuch Things as are ſworn againſt him: And tho' ſuch a Stir has been made about Popiſh Witneſſes and *Iriſh* Witneſſes, here has been but one *Iriſhman*, and never a Papiſt given any Evidence in this Cauſe; but had it been ſo, God forbid that the Country ſhou'd be an Objecti-

on

on to any Man's Teſtimony, or that Truth ſhou'd be confin'd to Places or Perſons.

And it is wonderful, that when the Court gave the Priſoner that kind Intimation, that he wou'd do well to prove his Loyalty as well as his Religion, he did not produce ſome of his later Acquaintance, ſome that knew him at *London*, rather than bring People to atteſt he was a good Proteſtant eighteen Years ago.

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Then the Chief Juſtice directed the Jury, and told them, that beſides thoſe Witneſſes who ſwore the Treaſon poſitively, the Teſtimony of Sir *William Jennings* and Mr. *Maſters* made the Thing probable, and ſhew'd the Priſoner had ſome extraordinary Thoughts, for what cou'd he mean by that Expreſſion, *That it wou'd not be long before more Blood was loſt*; or that other, *Marry, mock not, I may be a Colonel in Time.*

Page 825.

Col. Will not theſe Expreſſions bear a more favourable Interpretation?

L. C. J. I ſay you had ſome extraordinary Thoughts in your Heart.

Col. I am fitteſt, ſure, to explain my own Thoughts, and what may be, may not be too; and Words are always to be taken in the beſt Senſe.

The Chief Juſtice having ſumm'd up the Evidence ſomething briefly, Mr. *Colledge* complain'd there were many Things omitted; but the Chief Juſtice ſaid, he ſhou'd refer the reſt to the Jury; and Mr. Juſtice *Jones* ſaid, he cou'd add nothing to what my Lord had ſaid.

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Colledge reply'd, he deſir'd nothing but Juſtice, and hoped that no Body ſhou'd be permitted to be with the Jury; for he ſaid, he obſerv'd, that when the Bill was prefer'd againſt my Lord *Howard*, Mr. Attorney and Mr. Solicitor were an Hour and half with the Grand Jury: The Court ſaid, they might be with the Grand Jury, but a Baily ſhou'd be ſworn to keep the Petty Jury, that no Body come at them till they ſhou'd be agreed of their Verdict.

The Jury allow'd ſome Refreſhment, tho' the Caſe was Capital.

Then the Court order'd the Jury ſome Refreſhment before they went from the Bar, the Tryal having laſted till Three in the Morning, and they

they had two Bottles of Sack divided among them in the Priſoner's Preſence.

The Jury being withdrawn about half an Hour, brought the Priſoner in Guilty, at which there was a great Shout, and one Perſon was committed but diſcharg'd, the next Day. And *Aaron Smith* was order'd to enter into a Recognizance of 500 *l.* to appear in the Court of King's Bench the firſt Day of the next Term.

Colledge is convicted.

The next Day the Priſoner being brought to the Bar, and it being demanded what he cou'd ſay why the Court ſhou'd not give Judgment on him to die according to Law, Mr. *Colledge* ſaid, That at *London* it was ſworn againſt him that he wou'd pluck the King out of *White-Hall*, but now they ſaid he was to ſeize the King at *Oxford*; he was wholly innocent of either, and never entertain'd ſuch a Thought in his Life, and pray'd God to forgive them that had ſworn againſt him.

L. C. J. It is too late to make Profeſſions of your Innocence now you are convicted; but becauſe you inſiſt upon it, I ſhall ſay ſomething in Vindication of the Verdict: The Court were well ſatisfy'd with it, there were ſufficient Proofs, and the Jury have done according to Juſtice; and as you manag'd your own Defence, a ſmall Proof wou'd ſerve to make any one believe you guilty: Tho' you made your being a Proteſtant Part of your Defence, and call'd ſo many Witneſſes to your Religion and Reputation, none of them gave an Account you had receiv'd the Sacrament, or been at Church for many Years, or what Kind of Proteſtant you are; indeed it has been prov'd that you were mighty violent and zealous in crying out againſt Popery and the Papiſts, but your Actions tended to promote the Ends of the Papiſts, by throwing us into Confuſion; and you that cry'd ſo loud againſt Papiſts, it has been ſhewn whom you call'd Papiſt; you had the Boldneſs to ſay the King was a Papiſt, the Biſhops Papiſts, and the Church of *England* are Papiſts: And as to your Politicks, it has been prov'd that you juſtify'd the late horrid Rebellion, and they that will juſtify it wou'd do the ſame Thing again:

The Chief Juſtice vindicates the Verdict.

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And

And as to that Part of your Defence where you ſaid you went down to guard the Parliament with you Arms, I can't tell what you meant by it, I believe they none of them thought they needed a Guard; and when the two Houſes differ'd ſo much that the King was pleas'd to diſmiſs them, they all departed quietly, not a Man was ſeen to be diſturb'd, and how it came into your Head, that were but a private Man, to go to guard the Parliament I much wonder; had all Men of your Condition gone down ſo to guard the Parliament, what Confuſion might we have been in on a ſudden? And tho' you ſay you are but a mean Man, we have ſeen what was done by *Maſſanello*, a mean Man in another Country, and by *Wat Tyler* and *Jack Straw* in our own. So that when I conſider the Complexion of your Defence it makes an eaſy Proof have Credit; and tho' in your Caſe there was full Proof, if there had been a great deal leſs, the Jury might, with Juſtice, have found you guilty.

Sentence paſs'd on Mr. *Colledge* as a Traitor.

Then Sentence was pronounc'd on *Stephen Colledge* as a Traitor.

Col. What Time will your Lordſhip allow me for my Preparation.

L. C. J. We do not uſe to precipitate the Execution in Caſes of High Treaſon; we ſhall leave Order with the Sheriff to receive the King's Pleaſure and obey it; he will not do it ſo ſuddenly, but you will have Notice to prepare your ſelf.

Then the Court adjourn'd, and on *Wedneſday* the 31ſt of *Auguſt*, 1681, being the Day appointed by his Majeſty, he was executed over againſt the Gate of the Caſtle at *Oxford*.

He is executed.

Proceed-

Proceedings at the Old Baily, *before Commiſſioners of* Oyer *and* Terminer, *upon the Bill of Indictment for High Treaſon prefer'd againſt* Anthony *Earl of* Shaftſbury, *the* 24*th of* November, 32. Car. 2. 1681.

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THE Grand Jury being ſworn, the Lord Chief Juſtice *Pemberton* gave them their Charge: He acquainted them, that tho' all Matters of a Criminal Nature were under the Cognizance of this Court, and ſubject to their Enquiry, yet his Majeſty having Information of ſome traitorous Deſigns againſt his Perſon and Government, that was the particular Occaſion of their meeting at this Time; and therefore he ſhou'd confine himſelf in his Charge to ſuch Offences only as related to High Treaſon.

The Lord Chief Juſtice *Pemberton's* Charge to the Grand Jury.

He told them that this was a Crime of the higheſt Nature, tending to the Deſtruction both of the King and his Subjects, and even of the Government it ſelf, and accordingly the ſevereſt Puniſhments had been appointed for it.

That at Common Law there had been great Variety of Opinions concerning what was Treaſon, but the Statute of the 25th of *Edw.* III. had aſcertain'd it: That, indeed, there had been ſeveral other Statutes ſince, made upon particular Occaſions, declaring other Offences to be High Treaſon, as thoſe made in Queen *Elizabeth*'s Time againſt the Roman Catholicks, who were perpetually conſpiring againſt the Queen and her Government, *&c.*

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That the Act made in the 13th of this King was levell'd particularly againſt the Principles of ſuch Perſons as had cut off his Father, and maintain'd that dangerous War againſt himſelf, almoſt to the utter Extirpation of his Majeſty and all his good Subjects, and the Ruin of this flouriſhing Kingdom.

He

He is of Opinion Words were not treasonable by the 25. *Edw.* III.

He said this Act had very much alter'd the Law in Relation to Treasons, for by this the Intention of levying War was made Treason, which was not so before, unless a War was actually levy'd; that the purposing or designing the King's Death was not Treason before, unless it was declar'd by some Overt Act; but now the very Design, if manifested but by Words, was Treason: That Words expressing any malicious Design against the King's Life, Liberty, or Government, were, by this Act, made Treason, which were not held to be so before; and this was done in order to prevent those seditious and licentious Discourses that were so common in the late Times of Confusion, when Men vented their malacious Intentions to one another without any Restraint.

One Witness to one Overt Act, and another to another Overt Act, deem'd two Witnesses.

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That as to the Bills brought before them, they were to consider first, whether the Matter was Treason within the 25th of *Edw.* III. and if they doubted, they shou'd advise with the Court; next, they shou'd consider if there were two Witnesses, but if one cou'd testify to treasonable Words spoken at one Time, and another to treasonable Words spoken at another Time, they were two good Witnesses in Law, as had been resolv'd by all the Judges.

Probable Grounds sufficient to induce the Jury to find the Bill.

He told them farther, That if, by the Evidence produc'd, there was but probable Grounds to call the Persons to account, that was all that the Law requir'd to induce them to find the Bill; that they cou'd not convict the Party, and therefore they need not make so strict an Enquiry as the petty Jury, who were sworn to try the Fact, or Issue: And the Reason of their Institution [the Grand Jury] was, that no Man shou'd be indicted or try'd where there was no Colour or Ground for it, or any Reason to believe that the Thing cou'd be prov'd; he bid them remember also, that it was as great a Crime to acquit the Guilty as to charge the Innocent, and that if they discharg'd the Guilty the Crime wou'd lie at their own Doors: That they were under a double Obligation of doing right, 1. As they were Mem-

bers

bers of one great Body, of which the King was the Head; and 2. As they was under an Oath to go according to their Evidence.

That Compaſſion or Pity was not their Province or the Court's; that belong'd to a ſuperior Power from whence theirs was deriv'd: They were to act impartially according to their Evidence, and if they thought the King had Reaſon to call the Perſons to account named in the Indictment, they were to find ſuch Bills.

Then a Bill of High Treaſon was offer'd againſt the Earl of Shaftſbury; *and Sir* Francis Withins *mov'd that the Evidence might be given in Court publickly.*

Motion that the Evidence to the Grand Jury may be deliver'd in Court.

The Chief Juſtice ſaid that this being inſiſted on to prevent any falſe Reports concerning the King's Witneſſes or the Evidence, he cou'd not deny the Motion.

Whereupon the Jury deſir'd a Copy of their Oath, and withdrew; and being return'd, the Fore-man ſaid, they were of Opinion they ought to examine the Witneſſes in private, according to conſtant Practices; and they inſiſted on it, as their Right, to examine the Witneſſes in private, being bound to keep the King's Secrets by their Oath.

The Jury inſiſt they ought to examine the Evidence in private.

L. C. J. Late Uſage may have brought you into this Error; it is not your Right, but for the Conveniency of the Court, the Judges uſually having on theſe Commiſſions much Buſineſs upon their Hands, have, for their Convenience, permitted the Witneſſes to go to the Jury and be examin'd by them; but originally all Evidence was given in Court, and the Witneſſes are ſtill ſworn there: And it is not for your Advantage to have the Examination publick, that you may ſhew you do nothing clandeſtinely; beſides, the Thing being of an indifferent Nature, and the King requiring it, you ought to comply with him: You may here aſk the Queſtions your ſelves, and take your own Time; and as to keeping your Councils, that relates to your Debates, and in them you are allow'd to be private.

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Foreman. My Lord, we apprehend the very Words of the Oath obliges us to Privacy, for it ſays,

ſays, *We ſhall keep the Counſel's and our own Secrets* which implies the Examination ſhou'd be ſecret.

Mr. *Papillon.* My Lord, we underſtand that the ancient Uſage and Cuſtom of *England* is the Law of *England*, and as we wou'd not do any thing that might be prejudicial to the King, ſo neither wou'd we do any thing that ſhou'd be prejudicial to the Liberties of the People: Beſides, a publick Examination may prejudice the King; for where Witneſſes are examin'd privately, and Perſons are diſcover'd to be guilty who were not thought of before, we us'd to intimate this to the Court, and ſuch Perſons were ſecur'd; but by this publick Examination it will come to ſuch Perſons Ears, and they will abſcond; beſides, the Evidence being fore-known, Witneſſes may be pick'd up to contradict the King's Witneſſes. And the Jury alſo apprehend that in private they can more freely examine Things for ſatisfying their Conſciences, and hope they ſhall do their Duty without Favour or Affection.

The Court rule that the Evidence ſhou'd be publick.

L. C. J. As to your Debates, you are bound to conceal them, but as to the King's Secrets, you do not break you Oath; if the King will have it publick, 'tis the King publiſhes it: And as to the common Uſage, it was not only the ancient Practice, but every Term Evidence is heard in Court by the Grand Jury; it is uſual, if deſir'd, and I never knew it deny'd or ſtood upon by a Grand Jury till of late: And, Gentlemen, the King may be pleas'd with the Care you take of his Affairs, but, no doubt, the King's Counſel have examin'd the Matter, and underſtand it will be no Prejudice to the King to have the Evidence heard openly in Court.

Foreman. The Jury deſire it may be recorded that they inſiſted on their Right.

L. C. J. We are not to record what every Man deſires to be recorded; but here will be Witneſs enough of it you need not fear.

L. C. J. *North.* This was ſtood upon laſt Seſſions, but all the Judges were of this Opinion, and therefore you ought to acquieſce; indeed, where the King will, he ought to have it kept ſecret,

but

but where the Profecutor has defir'd the Evidence might be publick, I never knew it deny'd.

Mr. Sheriff *Pilk.* I defire the Witneffes may be kept out of Court, and call'd one by one. Page 832.

L. C. J. The King's Counfel will not be afraid of doing it; but Sheriffs don't ufe to move Things of this Nature. It is not your Duty, Mr. *Sheriff*, to meddle with it.

The Indictment read.

The Indictment for treafonable Words.

The Indictment fets forth, That *Anthony* Earl of *Shaftsbury*, late of St. *Martin*'s in the *Fields*, *in Com. Midd.* not having the Fear of God in his Heart, or weighing the Duty of his Allegiance, but being mov'd and feduc'd by the Inftigation of the Devil, *&c.* did, on the 18th Day of *March*, in the 33d Year of the King, and divers other Days and Times, as well before as after, in the Parifh of St. *Mary-le-bow*, in the Ward of *Cheap*, *London*, traitorouffly compafs and imagine the Death of the King, and the Subverfion of the Government, to depofe his Majefty, and to raife War and Rebellion againft him within this Kingdom of *England*; and to fulfil and perfect his faid traitorous Imaginations, he the faid *Anthony* Earl of *Shaftsbury*, did maliciouffly, traitorouffly, and advifedly, provide and prepare feveral armed Men of the King's Subjects, to aid and affift him: And the better to effect his faid traitorous Purpofes, the faid Earl did then and there traitorouffly affemble, meet, and confult, with one *John Booth*, and others the King's Subjects: And then and there the faid *John Booth* and others, in the Hearing of divers of the King's Subjects, did traitorouffly and advifedly perfwade to be affifting to him in his faid Treafons: And farther, that the faid Earl did, at the Day and Place aforefaid, traitorouffly and maliciouffly affert and declare, *That in a fhort Time the Parliament was to meet at* Oxford, *and he had infpected the Elections, and confider'd the Difpofitions of the Generality of the Members, and was fatisfy'd the Parliament wou'd infift upon three Matters, viz. The Bill of Exclufion againft the Duke of* York, *The abolifhing the* 35th *of* Eliz. *and the paffing a new Bill for the uniting Proteftants; with divers other good Bills: To which he, the faid Earl, was certain the*

King wou'd refuse his Assent, and therefore he expected there wou'd be a Division between the King and Parliament: And that many noble Lords and worthy Members of the Lower House did concur in the same Opinion, and were resolv'd to insist on passing those Bills: And if the King refus'd, they had provided Strength to compel the King to grant them: And, for his Part, he, the said Earl, had provided stout Men, to be commanded by Capt. Wilkinson, *of whom the Earl had agreed the said* John Booth *shou'd be one:* And that the said Earl did also, in order to effect his said traitorous Purposes, at the Time and Place aforesaid, assert and declare, *That the King was a Man of no Faith, and that there was no Trust in him: And that he deserv'd to be depos'd as well as* Richard the IId. And did farther assert and declare, *That he, the said Earl, wou'd never desist, until he had brought this Kingdom of* England *to a Commonwealth, without a King: And that the said Earl, and those who wou'd assist him, (and he knew many that wou'd assist him) wou'd make* England *a Commonwealth, as* Holland *was: And that they wou'd live as in* Holland; *and the King and all his Family shou'd be rooted out:* And that the said Earl did also maliciously, advisedly, and traitorously assert and declare, *That the King was a Man of an unfaithful Heart, and not worthy to be trusted, and not fit to rule and govern, being false, unjust, and cruel to his People; and if he wou'd not be govern'd by his People, they, the said Earl and the said other Traytors, wou'd depose him: Against his Allegiance, the King's Peace, his Crown and Dignity, &c.*

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L. C. J. Do you desire the Witnesses shou'd be examin'd apart.

Jury. It is our Desire.

Foreman. We desire we may have a List of the Witnesses.

L. C. J. All their Names are indors'd on the Indictment; but to have a List of their Names beforehand, I don't know any Reason you can assign for it.

Foreman. I desire we may see the Warrant by which the Earl of *Shaftsbury* was committed.

L. C. J.

L. C. J. That the Lieutenant of the Tower keeps for his Indemnity; we cannot demand it of him.

Mr. *Papillon.* We desire the Witnesses may come one after another, and give their Evidence, and then the Jury wou'd withdraw, and consider what Questions to ask them.

L. C. J. You shall do so: We used the same Method at the Request of the last Jury.

Mr. Attorney. I am inform'd there were several Questions to be ask'd the Witnesses, to direct the Grand Jury how to demean themselves.

L. C. J. Mr. Attorney, the Request is reasonable; and you, Gentlemen, that are Witnesses, you must all go out and come in as you are call'd, one by one.

Then William Blathwait, *Esq; was call'd, and a Paper shewn him.*

Evidence that the Paper call'd the *Association*, was found in my Lord *Shaftsbury*'s Closet

He depos'd, That this Paper was taken out of a Velvet Bag, which was in a Trunk that Mr. *Gwyn*, one of the Clerks of the Council, seiz'd at my Lord *Shaftsbury*'s House: That Mr. *Gwyn* having seiz'd my Lord *Shaftsbury*'s Papers, and brought them to the Council-Office, and put them into one of the Rooms, and lock'd the Door, he deliver'd the Key to the Deponent. And that on the 6th of *July*, by Order of the Committee of Examinations, the Deponent brought the Papers to the Council-Chamber, and the Trunks being seal'd, were open'd in the Presence of some of the Lords of the Council, and of Mr. *Wilson* and Mr. *Starkey*, who were appointed to attend, on Behalf of my Lord *Shaftsbury*; and that this was one of the Papers that was then taken out of the Velvet Bag that was in the great Trunk; and that Mr. Secretary *Jenkins* had this Paper some short Time in his Custody, and then return'd it to the Deponent again.

Then Mr. Gwyn *came in.*

He depos'd, That on the 2d of *July*, he had a Warrant from the Secretary to search my Lord *Shaftsbury*'s House for Papers; that he took a great many, and divided them into Parcels, and made a Note of the Parcels: That several of them were

in a great Hair Trunk: And ſome looſe Papers, that were in my Lord's Cloſet above Stairs, he put into a Velvet Bag he found there: That my Lord gave him his Keys as ſoon as he came, and told him where his Cloſets were, and ſaid he wou'd ſeal them up with his own Seal; but afterwards ſent the Deponent Word he might ſeal them with his Seal, and accordingly the Deponent ſet his Seal upon the Trunk, which he deliver'd to Mr. *Blathwait*.

L. C. J. Were all the Papers that were in that Velvet Bag in my Lord *Shaftsbury*'s Cloſet?

Mr. *Gwyn*. In my Lord *Shaftsbury*'s Cloſet above Stairs: There was nothing in that Bag but what I took out of my Lord *Shaftsbury*'s Cloſet.

Mr. Secretary Jenkins *ſworn*.

L. C. J. Was that the Paper that Mr. *Blathwait* deliver'd into your Hands?

Mr. Sec. *Jenkins*. This Paper was deliver'd into my Hands by Mr. *Blathwait*, at the Council-Chamber: I can't ſay this very Paper was taken out of the Bag, for there were a great many taken out of it, and I being at the Examination of the Papers, this was order'd to be put (and was put) into my Hands, with nine more. On *Monday* laſt I took the nine Papers intruſted with me, and this tenth out of my Deſk, and caus'd my Servant to mark them by Numbers; then I ſeal'd them up and ſent them to Mr. *Graham*, who brought them back to me without any Alteration, and then I put this tenth Paper into the Hands of Mr. *Blathwait* again: All the while it was in my Hands it was under Lock and Key, and none of my Servants ſaw it but when it was number'd.

Then the Paper was read, being a Draught of an Aſſociation.

The Purport of the *Aſſociation*, Page 835.

This Paper, in the Preamble, recites, that having endeavour'd in Parliamentary Way to exclude the Duke of *York* from the Crown, but to no Effect, the Subſcribers had therefore thought fit to enter into the following Aſſociation, *viz.*

'I *A. B.* do, in the Preſence of God, ſolemnly 'promiſe, vow, and proteſt, to maintain and de-

'fend

'fend, to the utmoſt of my Power, with my Per-
'ſon and Eſtate, the true Proteſtant Religion, a-
'gainſt Popery, and all Popiſh Superſtition, Ido-
'latry, or Innovation; and all thoſe who do or
'ſhall endeavour to ſpread or advance it within
'this Kingdom.

'I will alſo, as far as in me lies, maintain and
'defend his Majeſty's Royal Perſon and Eſtate; as
'alſo the Power and Priviledge of Parliaments,
'the lawful Rights and Liberties of the Subject, a-
'gainſt all Encroachments and Uſurpations of
'Arbitrary Power whatſoever, and endeavour en-
'tirely to diſband all ſuch mercenary Forces as we
'have Reaſon to believe were rais'd to advance it,
'and are ſtill kept up in and about the City of
'*London*, to the great Amazement and Terror of
'all the good People of the Land.

'Moreover, *J. D.* of *Y.* having publickly pro-
'feſs'd and own'd the Popiſh Religion, and noto-
'riouſly given Life and Birth to the damnable hel-
'liſh Plots of the Papiſts, againſt his Majeſty's Per-
'ſon, the Proteſtant Religion, and the Govern-
'ment of this Kingdom, I will never conſent that
'the ſaid *I. D.* of *Y.* or any other, who is or hath
'been a Papiſt, or any Ways adher'd to the Pa-
'piſts in their wicked Deſigns, be admitted to the
'Succeſſion of the Crown of *England*; but by all
'lawful Means, and by Force of Arms, if Need
'ſo require, according to my Abilities, will oppoſe
'him, and endeavour to ſubdue, expel, and de-
'ſtroy him, if he come into *England*, or to the Do-
'minions thereof, and ſeek by Force to ſet up his
'pretended Title, and all ſuch as ſhall adhere unto
'him, or raiſe any War, Tumult, or Sedition,
'for him or by his Command, as publick Enemies
'of our Laws, Religion, and Country.

And they did farther bind themſelves one to another, with their joint and particular Forces, to purſue to Deſtruction all who ſhou'd oppoſe the righteous Ends of this Aſſociation. And leſt this pious Work ſhou'd be obſtructed for want of Conduct, they engage themſelves to obey the Orders of the preſent Parliament while ſitting, or the major Part of the Members of both Houſes,

ſubſcribing this Aſſociation, when it ſhou'd be prorogu'd or diſſolv'd; and wou'd obey ſuch Officers as ſhou'd by them be ſet over them, 'till the Meeting of the next Parliament, and then they wou'd ſhew the ſame Obedience to them.

Neither wou'd they, for Fear or Reward, depart from this Aſſociation during their Lives, on Pain of being proſecuted by the reſt as perjur'd Perſons, and publick Enemies to God, the King, and their native Country. *In Witneſs whereof, they ſet their Hands and Seals, &c.*

Sir *Francis Withins.* This Paper is plauſibly penn'd in the Beginning, but in the laſt Clauſe but one they come to perfect levying War; for they ſay, *they will obey ſuch and ſuch Officers*; and in the Aſſociation, they ſay, they will join to deſtroy the mercinary Forces about *London*; which is downright levying War againſt the King and his Guards.

Forem. There is no Hand in it at all.

Mr. *John Booth* was ſworn.

Jury. He has ſtood in the Face of the Court all this while.

Mr. *Booth.* I came down but now.

Mr. *Shepherd.* My Lord, We deſire a Liſt of their Names, that we may know who is here and who is not.

Mr. *Godfrey.* This Man has been here all this while, and all the reſt may be here for ought I know.

Sir *Fr. Withins.* Mr. *Booth*, give an Account of what Diſcourſe you had with my Lord *Shaftsbury*.

Mr. *Booth's* Evidence of ſome treaſonable Words ſpoken by the Lord *Shaftsbury*.

Mr. *Booth.* In the middle of *January* laſt, I was introduc'd into my Lord *Shaftsbury's* Acquaintance by one Capt. *Henry Wilkinſon*, a *Yorkſhire* Gentleman, who had known me above twenty Years, and with whom I have had a familiar Converſation a long while. The firſt Occaſion of my waiting on my Lord *Shaftsbury*, was this: Capt. *Wilkinſon* did pretend to receive a Commiſſion from my Lord *Shaftsbury*, and ſome others of the Lords Proprietors of the Plantation of *Carolina*, to be their Deputy-Governor; and he ſaid he had a hopeful Proſpect of that Voyage, and his Intereſt

was good, and he cou'd procure me a Commiſſion, and ſuch a Number of Acres for Quantity and Quality, as I deſir'd; and we went to my Lord *Shaftsbury*'s, in order to receive Commiſſions for this Purpoſe; and the firſt Time I went, we found the Earl of *Craven*, Sir *Peter Colleton*, and one *Archdel*, a Quaker, there:

Both before and after this, Capt. *Wilkinſon* and I had ſeveral Diſcourſes about the Times: I knew him to be an old Royaliſt, and one who had ſerv'd his Majeſty and his Father in the Wars; but miſſing the Preferment and Rewards he expected from the King, he had repented of the Services he had done his Majeſty, and was now of another Opinion; and I had ſome Inducements too to be of the ſame Mind: And we often diſcours'd at my Lord *Shaftsbury*'s of the proroguing of the Parliaments, and the Diſappointments of the People, and our Fears of Popery and arbitary Power: We kept a continual Club, and convers'd together near three Quarters of a Year; and, between *Chriſtmas* and *March*, I went with Capt. *Wilkinſon* to my Lord's four or five Times; and when we came to my Lords, I obſerv'd there was always great Caution uſed before we were admitted, and our Names were ſent up: From the Affairs of *Carolina* we fell upon Matters of State; and I remember my Lord uſed to inveigh ſharply againſt the Times, and look'd upon himſelf as not ſo reſpected, as in thoſe Places he ought to be: And he ſeem'd diſcontented, and to be afraid of Popery and arbitrary Power.

And when the Election of Members of Parliament came on, he had an Account Weekly of ſuch as were choſen, and wou'd conſider their Inclinations and Diſpoſitions: And he ſaid, the Parliament that was to ſit at *Oxford*, wou'd inſiſt on the ſame Things the other Parliaments had done; particularly, that they wou'd never grant the King Money, or aſſiſt him in what he deſir'd, unleſs he gave the People Satisfaction in thoſe Things they had inſiſted on before, *viz.* The Bill of Excluſion, the Repeal of the 35th of *Eliz.* and a new Act for exempting Proteſtant Diſſenters from the other

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Penal Laws in Force againſt them: But if the King wou'd paſs theſe, and ſome other wholeſome Laws, for their Security, he believ'd they wou'd grant the King Money for his neceſſary Occaſions: But if he refus'd this, his Lordſhip ſaid he believ'd there wou'd be a Breach between the King and Parliament: That the Reaſon of the appointing the Parliament to meet at *Oxford*, was, that the Court might over-awe them: And that himſelf, and ſeveral other noble Lords, did judge it dangerous to go to *Oxford*, where the Guards, the Retinue of the Court, and the Scholars, who uſually encline to the Crown, might over-awe them, that they might not proceed for the publick Good, as they intended; and therefore his Lordſhip ſaid, he and others had conſider'd, that it was fit for them to have Guards ſent down thither; and accordingly he had eſtabliſh'd about fifty Men, Perſons of Quality, that he believ'd wou'd have Men along with them: And he had entruſted Capt. *Wilkinſon* with the Command of theſe Men, and they were to be at *Oxford* at ſuch a Time; and if there ſhou'd be any Breach between the King and Parliament, or any Violence offer'd to any of the Members, theſe Men, and others, that were provided by the other Lords, ſhou'd repel Force by Force, and purge the Guards of all Papiſts and Tories; and they were likewiſe to purge the King's Council, particularly the Earl of *Worceſter*, my Lord *Clarendon*, *Hallifax*, and *Feverſham*, and Mr. *Hyde*, were to be remov'd as dangerous, being the Perſons who were ſuppos'd to adviſe the King againſt what the Parliament had urg'd him to: And they wou'd bring the King to *London*, and have Things eſtabliſh'd for preſerving them from Popery and Arbitrary Power: And upon this Diſcourſe, Capt. *Wilkinſon* deſir'd me that I wou'd be one under his Command, and that I wou'd provide myſelf Horſe and Arms, and likewiſe Arms for my Man, which I did before the Parliament met at *Oxford*: And Capt. *Wilkinſon* ſaid he wou'd provide a Horſe for my Man: I think it was the 23d of *March* the Parliament was to ſit; and we enquir'd how Things went on, and found it was as my Lord

Shaftsbury

Shaftsbury had predicted: That they insisted on those Things he told us, but we did not imagine they wou'd have been so soon dissolv'd. On the *Thursday* before they were dissolv'd, Capt. *Wilkinson* told me he expected a Summons that very Week to go to *Oxford* with those Men that were listed with him; but News came on *Saturday* of the Dissolution of the Parliament, and so nothing was done.

Sir *Fr. Withins.* When did you discover this?

Mr. *Booth.* About six Weeks ago.

Sir *Fr. Withins.* Had you any Discourse with the Earl of *Shaftsbury* after Capt. *Wilkinson* spoke with you, or before the Sitting of the Parliament?

Mr. *Booth.* The first Motion concerning the fifty Men that were to be my Lord *Shaftsbury*'s Guard, came from Capt. *Wilkinson*; but after this, when I went with Capt. *Wilkinson* to my Lord's, the same Thing was discours'd there: The last Time I was with my Lord, was about a Week or ten Days before he went to the Parliament at *Oxon*; and then I heard the same Discourse from my Lord *Shaftsbury*'s own Mouth.

Sir *Fr. Withins.* Had you any other Discourse with my Lord?

Mr. *Booth.* I say I made three or four Visits between *Christmas* and *March*; and we every Time discours'd of the King; and if he refus'd those Motions, these Men were to be taken from him, and Force was to be us'd.

Sir *Fr. Withins.* Did you ever solicit any to make this Discovery?

Mr. *Booth.* One Mr. *Banes*, of my Acquaintance, being engag'd in some Business that one *Browning*, a *Yorkshire* Attorney, had wrote to him about, concerning some *Irishmen* that wou'd swear against my Lord *Shaftsbury*: I said I did not know what Conversation my Lord had with these *Irishmen*, but I was satisfy'd he had Conversation tending that Way with some *Englishmen* I knew: Whereupon Mr. *Banes* wou'd have me tell him what I knew, and I gave him some Intimation of it; and after that, I took a Resolution to discover it; and when I did discover it, I declare in the Pre-

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sence

ſence of God, no mortal Man knew what I cou'd ſay, nor did I make any other Application, but took Pen and Ink, and wrote it down, and ſeal'd it under a Cover, and ſent it to the Council.

L. C. J. Where wou'd you have theſe Witneſſes that are examin'd ſtand? To keep them apart is impoſſible, unleſs we had as many Rooms as Witneſſes.

Jury. Let one Man keep them.

L. C. J. Empty the Place where they were the laſt Time, and let them ſtand there.

Mr. *Edward Turbervile* was ſworn.

Sir *Fr. Withins.* Have you had any Diſcourſe with my Lord *Shaftsbury?*

Mr. *Turbervile.* Yes, ſeveral Times; particularly about the Beginning of *February* laſt, I waited on my Lord to deſire his Letter to the Preſident of the Council, to ſtand my Friend concerning ſome Money due to me; and my Lord took Occaſion to ſay, there was little Good to be had from the King while his Guards were about him; that if it was not for them, they ſhou'd ſoon go down to *Whitehall*, and obtain what Terms they thought fit. I ſaid, his Guards cou'd not defend him from the whole Kingdom. His Lordſhip ſaid, The Rabble were all of his Side, eſpecially the People about *Wapping* and *Alderſgate-ſtreet*; and the rich Men of the City wou'd vote for them in Elections, but they cou'd not expect they wou'd ſtand by them in Caſe of a Diſturbance, for they valu'd their Riches more than their Cauſe. And I heard my Lord ſay at *Oxford*, he wonder'd the People of *England* ſhou'd ſtickle ſo much about Religion; if he were to chuſe a Religion, he wou'd have one that ſhou'd comply with what was apt to carry on their Cauſe.

Mr. *John Smith* was ſworn.

Mr. *Smith.* I beg I may clear myſelf from ſome Reflections caſt upon me: It has been reported that I ſwore before the King, and at the Tryals of *Colledge* and *Rouſe*, that there was a general Deſign againſt his Majeſty; but I take it upon my Oath I never ſwore any ſuch Thing, nor can I ſwear there was a general Deſign by the City or the Parliament againſt the King.

L. C. J.

L. C. J. Speak what Diſcourſe you have had with my Lord *Shaftsbury*.

Mr. *Smith*. I ſuppoſe it is paſt all Doubt, that I have been very often with my Lord *Shaftsbury*: I have often heard him ſpeak very irreverently of the King, ſaying, he was a weak, inconſtant Man, and led by the Noſe, as his Father was, by a Popiſh Queen, which was the Ruin of his Father: But as to the particular Points I am to charge my Lord *Shaftsbury* with, he ſent for me once by Capt. *Manly*, who found me at Mr. *Bethel*'s Club at the *Queen's Arms* in *Newgate-ſtreet*: When I came to my Lord, he told me Mr. *Hetherington* was with him in the Morning, and ſaid, he was afraid the *Iriſh* Witneſſes wou'd go over to the Court Party; and I ſaid his Lordſhip might prevent it, by giving them an Allowance, for they were very poor. My Lord anſwer'd, *Hetherington* had the Charge of them, and he believ'd they did not want; but his Lordſhip ſaid, he found they ſtood in great Awe of me, and I muſt perſwade them from going nigh that great *Rogue Fitz-Gerald*, who was pamper'd up and maintain'd by the King and the Court-Party to ſtifle the Plot in *Ireland*; and added, that if the King were not as well ſatisfy'd of the Coming in of Popery as ever the Duke of *York* was, do you think, ſays he, the Duke of *York* wou'd be ſo much concern'd in the bringing in of Popery as he is? My Lord, I went to the *Iriſh* Witneſſes, and they promis'd me never to go near *Fitz-Gerald*: The next Morning Mr. *Hetherington*, and one *Bernard Dennis* came to me; and *Dennis* ſaid, he was ready to give in an Information againſt *Fitz-Gerald*, that he tamper'd with him to forſwear all he had ſworn before: Thereupon we went before the Lord Mayor, Sir *Patience Ward*, and *Dennis* made Oath of it; and I carry'd a Copy of the Information to my Lord *Shaftsbury*: My Lord read the Information, and was pleas'd with it, and ſaid, Mr. *Smith*, Don't you ſee the Villainy of that Man, and that factious Party, and that the King runs the ſame Steps as his Father did before him? How can any Thing of this Nature be done without the King? and

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and the Court pamper'd him up: At another Time, a little before the Parliament met at *Oxford*, my Lord, in Diſcourſe, ſaid, that a great many were gather'd together upon the Road between *London* and *Oxford*, in order to terrify the Parliament to comply with the King; but he was ſure they never wou'd comply with him, they were more reſolute than ever, for they ſaw clearly the King aim'd at bringing in Popery: And we have this Advantage of him, ſays he, if he offer any Violence to us, (for we expect it) that we have the Nation for us, and we may lawfully oppoſe him, and he will meet with a very ſtrong Oppoſition, for all that come out of the Country ſhall be well hors'd and arm'd; and that, old as he was, he wou'd oppoſe it to his Power: I ſaid, by this Means, we ſhou'd be engag'd in another Civil War; and we ſhou'd either make an End of Monarchy, or enſlave the Nation to Popery for ever: No doubt of one, ſays he; but we are ſure, for the Nation is on our Side; and the City, you know how they are, and where-ever they ſtrike, I'm ſure the Nation will; and this I'll ſtand and die by. This is the Subſtance of what I have to ſay againſt my Lord *Shaftsbury*; and, upon the Oath I have taken, I am ſure I have not added a Word: It is reported in the City, that I have been hir'd and ſuborn'd, but I never took a Far-

Page 181. thing of the King's Money or theirs in my Life.

L. C. J. Who ſuppoſes it?

Mr. *Smith*. It is in Print in the Book that came out laſt Night.

L. C. J. I had Reaſon to expect there was no ſuch Objection.

Brian Haines was ſworn.

He depos'd, That he had heard the Lord *Shaftsbury* often vilify the King, and that my Lord converſing with the Deponent concerning his Narrative about Sir *E. Godfrey*, and the Deponent deſiring my Lord not to expoſe him to the King's Anger, for he was ſure he wou'd never pardon any Man that impeach'd the Earl of *Danby*; his Lordſhip anſwer'd, That he wou'd go with the Earl of *Eſſex* and my Lord *Maxfield* to the King,

and

and beg the Deponent's Pardon if he wou'd put in Writing what he cou'd teſtify, and that if his Majeſty did not grant the Deponent a Pardon they wou'd raiſe the whole Kingdom againſt him; that the King muſt not expect to live peaceably in his Throne if he did not grant it, for he wou'd make himſelf the Author of the Plot: And that at another Time his Lordſhip ſaid, If he did not do it he cou'd not expect to be long King of *England*: And that the Deponent aſking his Lordſhip what they intended to do with the Government if they pull'd the King down, my Lord anſwer'd, that the Duke of *Bucks*, by his Mother, had as good a Right to the Crown of *England* as any of the *Stuarts*, for ſhe was deſcended from the *Plantagenets*, from ſome of the *Edwards*.

John Macnamarra was ſworn.

He depos'd, That he was with his Lordſhip a little before he went to *Oxford*, to deſire his Lordſhip to take Care of him, as he had promis'd to do of the other Witneſſes of the Popiſh Plot; and that he waited on his Lordſhip at his Return from *Oxford* again, and my Lord was pleas'd to ſay, that the King was popiſhly affected, and adher'd to Popery; and that he took the ſame Methods his Father before him took, which brought his Father's Head to the Block, *and we will alſo bring his thither.* That about a Fortnight afterwards he was with his Lordſhip, and he told the Deponent, there was a Proviſion made for the Witneſſes, and the Money was in the Hands of one Mr. *Rouſe*, a Servant to Sir *Thomas Player*, and his Lordſhip then took Occaſion to ſay, That the King was a faithleſs Man, that there was no Credit to be given him, and that the Dutcheſs of *Mazarine* was his Cabinet Council, who was the worſt of Womankind.

Sir *Fr. Withins.* Did you hear any Thing about the depoſing the King? Page 830.

John Mac. Yes; he ſaid the King deſerv'd to be depos'd as much as ever King *Richard* II. did.

Dennis

Dennis Macnamarra was ſworn.

He depos'd, That about the latter End of *March*, or the Beginning of *April*, he was at my Lord *Shaftsbury*'s Houſe, with Mr. *Ivy* and his Brother, and my Lord ſaid, *That the King was a Man that ought not to be believ'd, and there was no Belief in him, and that he ought to be depos'd as well as King* Richard II. *and that the Dutcheſs of* Mazarine *was his Cabinet Council, and that he did nothing but by her Conſent.*

Edward Ivy was ſworn.

He depos'd, That ſoon after the Parliament was diſſolv'd at *Oxford* he was at my Lord *Shaftsbury*'s, where he heard my Lord ſay, the King was an unjuſt Man, and not fit to reign; and he wonder'd he did not take Example by his Father before him; that he believ'd he was a Papiſt in his Heart, and intended to introduce Popery, and therefore they deſign'd to depoſe him and ſet up another in his ſtead; and that *Haynes* having ſomething to diſcover about the Death of Sir *E. Godfrey*, my Lord ſaid, the King dare not deny *Haynes* a Pardon; but if he did, they wou'd riſe upon him and force him.

Bernard Dennis was ſworn.

He depos'd, That he came over with a Deſign to make the Plot clear and plain, and was an Evidence at the Tryal of my Lord *Stafford*, which made him taken Notice of to be ſupported by the Earl of *Shaftsbury*, who ſent Mr. *Hetherington* for him ſeveral Times, and Mr. *Hetherington* ſubſiſted him: That once my Lord told the Deponent, in the Gallery of his Lordſhip's Houſe, that he had given a good Account of the Plot in general, but as to the Queen and Duke of *York*, he muſt ſpeak more home and poſitive againſt them, that he might, at leaſt, corroborate what others ſwore againſt them: That a little after the Parliament, at *Oxford*, his Lordſhip ſent for the Deponent, and told him, he underſtood he was a Clergy-Man, and adviſ'd him to put on a black Gown, and he wou'd prefer him to a Benefice; that his Lordſhip recommended the Deponent to Dr. *Burnet*, with whom he had afterwards great Familiarity;

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arity; that he waited on his Lordſhip at another Time and acquainted him he was low in Pocket; my Lord ſaid he had appointed Mr. *Rouſe* to ſupply him; and that his Lordſhip aſk'd the Deponent how many he thought there was of his Name in his Country, [*Ireland*] and the Deponent told him he thought there might be 3 or 400 able body'd Men of his Name in the Country where he was born, and my Lord bid him adviſe thoſe of his Name and his other Friends to be in a Readineſs, if Occaſion ſhou'd ſerve, to aſſiſt the Commonwealth of *England*, for they intended to have a Commonwealth, and no Crown or ſupreme Head; and that they wou'd extirpate the King and all his Family, as near as they cou'd: And his Lordſhip ſaid, he wonder'd their Nation were ſuch Fools, for that Queen *Elizabeth*, King *James*, and both King *Charles's*, had wrong'd them, to their very Deſtruction, but they wou'd be better dealt with if *England* was a Commonwealth.

L. C. J. The King's Counſel will call no more Witneſſes; ſeveral of theſe do ſwear Words that are treaſonable in themſelves: Wou'd you aſk them any Queſtions?

Foreman. We will walk up and conſider what Queſtions to aſk.

Mr. *Papillon*. We deſire to know if the Indictment is found on the 25 *Edw.* 3. or the 13 of this King, or both of them.

L. C. J. It is grounded on the 13th of this King, tho' here is enough to find an Indictment of Treaſon upon the 25th of *Edw.* 3. The laſt is the more copious Statute, and has enlarg'd the 25th of *Edw.* 3. but you are to conſider both.

L. C. J. It being *contra formam Statuti*, it may be underſtood *Statutorum* or *Statuti*; therefore all Statutes that may be the Foundation of this Indictment you may go upon.

The Grand Jury are not to examine into the Credibility of the Witneſſes.

Jury. We deſire to know whether the Witneſſes ſtand indicted or no?

L. C. J. The Proofs concerning the Credibility of the Witneſſes is not properly before you at this Time; that is to be conſider'd on the Tryal, by

by the petty Jury, for there the King will be heard, to defend the Credit of his Witneſſes, if any Thing is objected to them: It is proper for the Priſoner to do that; you are only to ſee whether the Statute be ſatisfy'd, in having Matter that is treaſonable, and atteſted by two Witneſſes who are *prima facie*, credible, unleſs you of your own Knowledge know the contrary.

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Mr. *Papillon.* If we are not left to conſider the Credibility of the Witneſſes, we cannot ſatisfy our Conſciences.

L. C. J. You are to conſider of the Caſe according to the Things alledg'd and prov'd: Indeed, if you know any Thing of your own Knowledge, you ought to take it into Conſideration.

Then the Jury withdrew, and the Court adjourn'd, and in the Afternoon, the Court being ſet, the Jury came in again, and examin'd the Witneſſes; and firſt,

Mr. *Gwyn* was call'd again.

The Witneſſes re-examin'd by the Grand Jury.

Foreman. Who put up the Papers, and who went with you?

Mr. *Gwyn.* None but my Lord's Servants, I think, went with me; but I put up the Papers my ſelf.

Foreman. Whoſe Hand-writing is the Paper, and how came it into my Lord's Cloſet?

Mr. *Gwyn.* I can't tell whoſe Writing it is, or how it came there; but all the Papers in the Bag were there before I came, and I had the Key from my Lord himſelf.

Mr. Secretary *Jenkens* was call'd.

Foreman. Did not you hear of an *Aſſociation* in Parliament.

Mr. Secretary. There was an Anſwer to a Meſſage from the Houſe of Commons that had ſomething in it that did ſtrongly imply an Aſſociation, but this particular Aſſociation I do not remember to have heard propos'd.

Foreman. Don't you remember it was read in the Houſe of Commons on Occaſion of that Bill?

Mr. Secretary. I heard ſuch a Thing ſpoken of, but was not preſent, as I remember.

Foreman. What Date was the Warrant for my Lord *Shaftsbury*'s Commitment?

Mr. Secre-

Mr. Secretary. It was about *July*; but I muſt refer my ſelf to the Warrant for that.

Foreman. Were all theſe Witneſſes examin'd before the Committee?

Mr. Secretary. I can't ſay all, but I was at the Examination of ſeveral of them.

Mr. *Booth* was call'd.

Foreman. We wou'd know when and where you had that Diſcourſe with my Lord *Shaftsbury*?

Mr. *Booth*. 'Twas at *Thanet-Houſe*, where he liv'd, about ten Days before the Parliament met at *Oxford*; one Mr. *Wilſon* led me into the Chamber. Page 844.

Foreman. Who was preſent at the Diſcourſe?

Mr. *Booth*. None but him and I, Sir.

Foreman. In what Room was it?

Booth. It was in the Room he uſually ſits, on the left Hand as we came out of the Long Gallery; as I remember, we paſs'd thro' a Room hung and wainſcotted, before we came to it.

Foreman. How long was it before you diſcover'd this?

Booth. I ſent my firſt Information to the Lords of the Council about ſeven or eight Weeks ago, by Mr. *Walter Banes*.

Foreman. Had you ſeveral Diſcourſes with my Lord, and had you eaſy Admiſſion?

Booth. I was admitted by Captain *Wilkinſon*'s Means at firſt, and ever after had eaſy Admittance and Familiarity with him.

Foreman. Did he talk to this Purpoſe every Time?

Booth. Something to this Purpoſe he did talk every Time, but not ſo fully.

Foreman. What Education have you had? Was you ever an Attorney's Clerk, or Juſtice's Clerk?

Booth. I have had an Academical Education, and taken Orders; but never was an Attorney's Clerk, or Juſtice's Clerk.

Foreman. Do you officiate as a Miniſter?

Booth. No.

Foreman. Were you ever indicted for Felony?

Booth. No.

L. C. J. Sir, he is not to accuſe himſelf, or fix a Scandal on himſelf.

Mr. *Papillon.* Did you know any of the fifty Men that you ſay were liſted with you?

Booth. Not directly, but by Captain *Wilkinſon*'s Information.

Foreman. Did Mr. *Banes* propoſe any Reward to you for making a Diſcovery, when you talk'd with him about it?

Booth. Not a Farthing.

Foreman. Are you acquainted with *Callaghan* and *Downing*, two Iriſh-men?

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Booth. No, I never was in their Company, or heard their Names, that I know of.

Foreman. Do you know *Sheldon* or *Marriot*?

Booth. I have heard of one *Marriot* that belong'd to the Duke of *Norfolk.*

Mr. *Godfrey.* Did you never hear of any *Iriſh* Witneſſes ſent to the Iſle of *Ely* by *Marriot*?

L. C. J. We gave you all the Liberty in the World, hoping you wou'd aſk pertinent Queſtions; but what is it to the Purpoſe, whether *Marriot* ſent any *Iriſh* Witneſſes to his Tenant or no?

Mr. *Godfrey.* Do you go under any other Name but *Booth*?

The Witneſs inſulted.

Booth. No; nor never did: My Lord, I can't go in Safety for the Tumult.

L. C. J. Mr. Sheriff *Pilkington*, ſend your Officers to protect him; I ſhall require him at your Hands.

Mr. *Turbervile* was call'd again.

Foreman. When had you this Diſcourſe with my Lord *Shaftsbury*, and where?

Turb. It was one Morning about the Beginning of *February*, I think; Mr. *Shepherd* ſhew'd me into his Room at the upper End of the Dining-Room.

Foreman. When did you communicate this to any Body?

Turb. About the 4th of *July* I gave my firſt Information to Mr. Secretary *Jenkins.*

Foreman. Did not you tell Mr. *Herbert* you knew nothing of this Matter?

Mr. Attorney. My Lord, this is not to be allow'd; this is private Inſtructions.

L. C. J.

L. C. J. Are theſe Coffee-houſe Diſcourſes, think you, Ground enough to cavil at the King's Witneſſes.

Foreman. My Lord, Mr. *Herbert* himſelf declar'd this to me ſome Months ago.

Turb. I don't remember I ever ſpoke one Word to Mr. *Herbert* in my Life.

Mr. *Papillon.* Were not you one of them that petition'd the Common Council, and declar'd, you were tempted to be a Witneſs againſt your Conſcience?

Turb. It was drawn by the Order of Mr. *Colledge*, and I ſign'd the Petition; but I never read it, or knew what was in it.

L. C. J. Mr. *Richardſon*, bring in ſome of thoſe People that make a Noiſe. Page 846.

Turb. My Lord, I go in Danger of my Life, the People threaten to ſtone me.

Mr. *Papillon.* What was your Deſign in Petitioning?

Turb. We were told that the City wou'd advance us Money if we did petition.

Mr. *Papillon.* Did any Body move you to be a Witneſs againſt my Lord *Shaftsbury*?

Turb. No, I did it voluntarily: I hope your Lordſhip will take Care we been't knock'd on the Head. The Witneſſes complain again of being inſulted.

L. C. J. That we give in Charge to Mr. *Sheriff*; it is a Reflection not only on the City, but on the whole Kingdom to ſuffer ſuch Diſorders: Mr. Sheriff, look the King's Witneſſes come to no Hurt.

Mr. *John Smith* call'd again.

Mr. *Papillon.* Did not you go by the Name of *Barry*?

Smith. Yes, I did: It was uſual for Popiſh Prieſts to go by ſeveral Names.

Mr. *Papillon*, What Religion are you of?

Smith. I am a Proteſtant, and have been ſo many Years: I was perverted to the Popiſh Religion, and afterwards became a Proteſtant again.

Mr. *Papillon.* When did you receive the Sacrament?

Smith. About three Months ago, in *Bow* Church.

Mr. *Papillon.* Was you desir'd to be a Witness, and when did you give your Evidence first?

Smith. I gave my Evidence voluntarily to Mr. Secretary *Jenkins*, a little after my Lord *Shaftsbury* was committed, I believe —— My Lord, they bid the People stone us to Death; and when we were at the Tavern Dr. *Otes*'s Man came out and gave the Rabble a Bottle of Wine, and bid them knock us down.

L. C. J. What was the Man's Name?

Otes. My Lord, I keep half a dozen Men, but I know nothing of it.

L. C. J. I hope you keep no Men to affront the King's Witnesses.

Mr. *Papillon.* When did you hear these Words?

Smith. Which Words?

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L. C. J. He told you he discours'd my Lord *Shaftsbury* several Times, and at sometimes he said these Words, and at other Times other Words; and for you to catch him upon a Question, it does not shew a fair Inclination.

Mr. *Papillon.* We are not for Catches, we desire but to discover the Truth: Did you hear any other treasonable Words than what you heard at my Lord's House?

Smith. No, I did not.

Mr. *Papillon.* Are you an *Englishman* or an *Irishman*?

Smith. If I were an *Irishman*, wou'd that prejudice my Evidence.

L. C. J. I hope the Jury have more Discretion than to think an *Irishman* is not a good Witness.

Mr. *Papillon.* Did you petition the Common-Council?

Smith. I never petition'd the City, or had a Farthing of them, nor have any Occasion to be beholden to your Common-Council.

Mr. *Papillon.* Have you no Allowance from any Body?

L. C. J. Is that a pertinent Question; or do you intend to ask him if he is brib'd to give his Evidence, if you mean to speak plain.

Bryan

Bryan Haynes was call'd again.

Papillon. When did you give in your Information of this Matter?

Haynes. The Day that I was taken, the 28th of *June* laſt, which was before my Lord was committed.

Papillon. Did you never give any Information to a Juſtice of Peace of a Deſign againſt my Lord *Shaftsbury*, and what was that Deſign?

Haynes. I made Affidavit before the Recorder, in *March* laſt, that Mr. *Fitz-Gerald*, told me he had given it under his Hand to the King, that the Earl of *Shaftsbury* did reſolve to ſet the Crown upon his own Head, or otherwiſe, to turn the Kingdom into a Commonwealth. Page 848.

Mr. *Papillon.* Did my Lord ſay the ſame Things every Time you diſcours'd with him.

Haynes. The laſt Time I ſpoke with him was about the Time of *Fitz-Harris*'s Tryal, at a Paſtry-Cook's in *Ironmonger-lane*; he wanted me to explain what I meant by the tall Man I mention'd in my Narrative; and I believe I had an Hour's Diſcourſe with my Lord, and I aſk'd my Lord what Religion the King was off? Truly, ſays he, he has no more Religion than a Horſe. When he came firſt, they ſaid, he had a Tincture of Popery, but ſince, he has degenerated from all the Principles of Chriſtianity, for he is juſt like a perfect Beaſt.

Papillon. Were you ever a Witneſs for my Lady *Windham*?

Haynes. No, Sir: But ſhe arreſted me becauſe I ſaid I lay with her.

John Macnamarra was call'd.

Papillon. When did you hear my Lord ſay that the King deſerv'd to be depos'd, *&c.*

John Macnamarra. In the Beginning of *April*, at his own Houſe; and Mr. *Ivey* was by. Page 849

Papillon. When did you make Information of this?

John Macnamarra. Some Time before my Lord's Commitment, I inform'd Mr. Secretary *Jenkins* of it.

Papillon. Did not you petition the Common-Council for Relief?

John Macnamarra. Yes: I did ſign a Petition, but I never read it, or knew what was in it: I heard that Mr. *Colledge* promoted it by my Lord *Shaftsbury*'s Advice.

Dennis Macnamarra was call'd.

Papillon. Who introduc'd you to my Lord *Shaftsbury?*

Dennis Macnamarra. My Brother, the laſt Witneſs, introduc'd me, the latter End of *March* or the Beginning of *April* laſt; and Mr. *Ivey* and my Brother was by when my Lord had the Diſcourſe I mention'd.

Papillon. When did you give this Information?

Dennis Macnamarra. A great while before my Lord was committed, I gave it to Mr. Secretary *Jenkins.*

Mr. *Papillon.* My Lord, I wou'd aſk him if he has a Pardon?

L. C. J. *North.* The Priſoner may make Exceptions to the Witneſs, but there are none to be made here.

Papillon. We muſt ſatisfy our Conſciences, and that very much depends upon the Credibility of the Witneſſes.

L. C. J. Wou'd you aſk him to accuſe himſelf?

Papillon. If he has a Pardon, he is in *Statu quo*: Suppoſe ſome of them have been guilty of Poiſoning, ſome of Felony, ſome of Robbing on the Highway, we do but aſk them if they are pardon'd; but if you do not give us Leave to aſk them, we muſt forbear.

L. C. J. *North.* I do not think it proper to aſk.

Edward Ivey was call'd.

Mr. *Papillon.* When did you hear my Lord *Shaftsbury* ſpeak the Words you mention?

Ivey. I have diſcours'd with my Lord ſeveral Times, but thoſe Words were ſpoken the latter End of *March*, or the Beginning of *April*; both the *Macnamarra*'s, I think, were preſent when he ſpoke them.

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Papillon. When did you make this Information, and where?

Ivey. Some Time before my Lord's Commitment to the Secretary of State.

Papillon. There are two Months between the Words and my Lord's Commitment: How came you to conceal them ſo long?

Ivey. I made it as ſoon as I cou'd.

Foreman. Do you know of any other treaſonable Words ſpoken by my Lord?

Ivey. I have declar'd what I know.

Bernard Dennis was called.

Papillon. When was the Diſcourſe you had with my Lord *Shaftsbury*?

Dennis. In *March*, three or four Days after my Lord came from *Oxford*; and his Gentleman, Mr. *Shepherd*, was in the Room, and more of his Servants, but whether they heard them I cannot tell.

Papillon. When did you make this Information?

Bernard Dennis. In *June*, before Mr. Secretary *Jenkins*.

Papillon. Why did you conceal it ſo long?

Dennis. Becauſe I was in the City ſo long.

Papillon. Did you ever muſter your 400 Men in *Ireland*?

Dennis. Upon my Word, I advis'd ſome of them to be ready.

Papillon. How long have you been a Proteſtant?

Dennis. Since *February* laſt.

Papillon. In what Place in the Houſe had you this Diſcourſe with my Lord?

Dennis. In the Great Chamber: I don't know whether you call it the Hall or the Parlour.

Papillon. Did he ſay any treaſonable Words in any other Place?

Dennis. Yes: In the Long Gallery in his own Houſe. He ſaid he wou'd have a Commonwealth, and extirpate the Crown, *&c.*

Papillon. Are not all your Kindred Papiſts?

Dennis. Moſt of them are.

Page 851.

L. C. J. *North.* Now you have aſk'd theſe Queſtions, Gentlemen, you had beſt go and conſider of your Evidence; you are to conſider whether it be fitting for the King to call my Lord *Shaftsbury*

to account for treaſonable Words: I obſerve you aſk'd whether the Parliament debated about an Aſſociation; I am not certain whether it related to that Paper or no, but I muſt ſay, I never heard the Contents of that Paper before, and hope you will conſider it well: One of the Ends, I think it propoſes, is to deſtroy the mercenary Forces about *London* and *Weſtminſter*, and the Government to be by a Majority of Members of Parliament, without the King; and this being found under Lock and Key in my Lord's Study, there is a great Preſumption upon it; nor doth it import an Aſſociation by Act of Parliament. I hope you will conſider your Oaths, and give every Thing its due Weight.—— Will you have the Statute read?

Jury. We will read it above.

Then the Jury withdrew, and afterwards return'd the Bill Ignoramus, *whereupon the People ſhouted.*

The Earl takes the Teſt, and declares his Senſe of it.

EDinburgh the 3d of *Novemb.* 1681, his Royal Highneſs the Duke of *York* being preſent in Council, the Earl of *Argyle* took the Teſt, as a Privy-Counſellor, having firſt declar'd his Senſe, and given this Explanation of it. He ſaid, *That he had conſider'd the Teſt, and was very deſirous to give Obedience as far as he could. He was confident the Parliament never intended to impoſe contradictory Oaths, therefore he thought no Man could explain it, but for himſelf; and accordingly, That he took it as far as it was conſiſtent with itſelf and the Proteſtant Religion, but he meant not to bind up himſelf in his Station, and in a lawful Way to wiſh and endeavour any Alteration he thought to the Advantage of Church and State, nor repugnant to the Proteſtant Religion or his Loyalty.*

The Earl having taken his Place at the Board, the Council's Explication of the Teſt was read and debated, and put to the Vote, and paſs'd, the

Earl

Earl not voting thereto. This Explication was as follows, (*viz.*) 1. *That tho' the Confession of Faith, ratify'd in Parliament* 1567, *was fram'd in the Infancy of Reformation, and deserves its due Praise, yet, by the Test, we do not swear to every Proposition or Clause therein contain'd, but only to the true Protestant Religion, founded on the Word of God, contain'd in that Confession, as it is oppos'd to Popery and Fanaticism.* 2. *That by the Test, no Invasion or Encroachment was made or intended upon the intrinsick Spiritual Power of the Church, or Power of the Keys, as it was exercis'd by the Apostles and the Primitive Church in the first three Centuries: All which was still reserv'd entirely to the Church.* 3. *That the Oath and Test was without any Prejudice to Episcopacy.*

Page 852. The Council's Explication of the Test.

The 4th of *November*, 1681, the Earl being about to take the Test, as a Commissioner of the Treasury, and having upon Command produc'd a Paper, importing the Sense in which he took the Test the Day before: It was resolv'd he cou'd not sit in Council, not having taken the Test according to the Sense and Meaning of the Act.

Resolv'd the Ea could not sit in Council, not ha ving taken the Test according to the Meaning of the Act.

Page 853.

The 8th of *November*, 1681, the Privy-Council thought fit to send a Letter to his Majesty, to acquaint him that the Earl of *Argyle*, after some Delays, came to the Council to take the Test as a Privy-Counsellor, and spoke some Things which were not then adverted to; and that when the Earl came to take the Test again, as a Commissioner of the Treasury, and was commanded to take it simply, he refus'd so to do; but gave in a Paper, shewing the only Sense in which he would take it. Upon Perusal whereof, they found it to contain many scandalous Reflections on the late Act of Parliament for taking the Test; and therefore they had thought fit to send the Earl to the Castle of *Edinburgh*, and transmit the Paper to his Majesty, being expressly oblig'd to both by his Majesty's Laws: And they had commanded his Majesty's Advocate to prosecute the said Earl for being the Author, and having given in the said Paper, and expected his Majesty's farther Commands.

A Letter to the King, that the Earl refus'd to take the Test simply, and had given in a Pap reflecting upon it; whereupon they had commi ted him to the Castle.

November

His Majesty directs them to prosecute him, but not to proceed to Sentence without acquainting him.

November the 15th, his Majesty was pleas'd to send Answer to the Privy-Council, wherein he approves all that they had done in relation to the Earl, and authorizes them to proceed in their Prosecution against him; nevertheless, before Sentence, to give his Majesty a particular Account of what he should be found Guilty of, to the End, that being fully inform'd thereof, he might signify his farther Pleasure in that Matter.

Before the Counsel receiv'd his Majesty's Answer, they had caus'd his Majesty's Advocate to exhibit an Indictment against him for slandering and depraving the Laws, *&c.* but upon Receipt of his Majesty's Answer, they order'd a new Indictment to be preferr'd, containing, besides the former Points, the Crimes of Treason and Perjury.

The Indictment for High Treason, *&c.* in publishing a Seditious Libel, being a pretended Explanation of the Test.

' The Indictment sets forth, That albeit, by ' the Laws of all well-govern'd Nations, and by ' the municipal Laws and Acts of Parliament of ' this Kingdom, (and particularly by the Acts in ' the Indictment cited) all Leasing-makers, and ' Tellers of them, are punishable with Tinsel of ' Life and Goods. And whereas by the 107th ' Act Par. 7. *Jac.* 1. It is statuted, That no Man ' put another Sense upon the Statutes than the ' Makers intended and the Statute imports: And ' by the 10th Act, Par. 10. *Jac.* 6. It is statuted, ' That none of his Majesty's Subjects presume, or ' take upon him publickly to declare, or privately ' to speak, or write any Purpose of Reproach, or ' Slander of his Majesty's Person, Estate, or Go- ' vernment, or to deprave his Laws or Acts of Page 854. ' Parliament, or misconstrue his Proceedings, ' whereby any Mistaking may be mov'd betwixt ' his Majesty, his Nobility, and Loving Subjects, ' on Pain of Death. And whereas by an Act of ' 1 *Car.* 2. it is statuted, That whoever shall, by ' Writing, Libelling, or Remonstrating, declare ' any Words or Sentences to stir up the People to ' the Dislike of his Majesty's Prerogative and Su- ' premacy in Causes Ecclesiastick, or the Go- ' vernment of the Church by Bishops, *&c.* should ' be incapable of exercising any Office, Civil, Ec- ' clesiastick,

'cleſiaſtick, or Military. And by the 130th Act,
'Par. 8. *Jac.* 6. it is enacted, That none preſume
'to impugn the Authority of the three Eſtates,
'or procure Innovation, or Diminution of their
'Authority, under the Pain of Treaſon. And it
'is much more Treaſon to alter, add to, or make
'new Laws, which is his Majeſty's higheſt and
'moſt incommunicable Prerogative. Yet true it is,
'that albeit his Majeſty did not only beſtow on
'the ſaid *Archibald* Earl of *Argyle*, theſe vaſt
'Lands, *&c.* juſtly forfeited to his Majeſty, by
'the Crimes of the Earl's Father, and alſo par-
'don'd and remitted to the preſent Earl the
'Crimes of Leaſing-making, and of miſconſtru-
'ing his Majeſty's and the Parliament's Proceed-
'ings, for which he had been condemn'd to die,
'and had rais'd him to the Title and Dignity of
'an Earl, and made him a Member of all his Ma-
'jeſty's Judicatories; yet the ſaid Earl, being put
'to take the Teſt by the Counſel, inſtead of tak-
'ing it in the genuine Senſe, as the Act requires,
'without any Equivocation or Mental-Reſerva-
'tion, he did declare againſt and defame the
'ſaid Act; and to corrupt others, he had drawn
'his Senſe up in a Libel, and diſpers'd Copies
'thereof, in order to make ill Impreſſions on the
'People: That by his declaring in that Libel,
'*He had conſider'd the Teſt, and was deſirous to give*
'*Obedience as far as he could*, he inſinuated, he was
'not able to give a full Obedience: By his ſaying,
'*he was confident the Parliament never intended to*
'*impoſe Contradictory Oaths*, he would induce the
'People to believe, the Parliament had been ſo
'impious and ridiculous to impoſe contradictory
'Oaths: That by affirming, *That every Man muſt*
'*explain it for himſelf, and take it in his own Senſe*,
'all Oaths and Laws are render'd Uſeleſs; for
'the Legiſlator cannot be ſure that the Oath im-
'pos'd by him, will bind the Takers according to
'the Deſign and Intent for which he appointed
'it; and the Legiſlative Power is thereby ſettled
'in the Subject, who is to take the Oath: And
'by his ſaying he took the Teſt, *ſo far only as it*
'*was conſiſtent with itſelf and the Proteſtant Religion*,
he

His Father's Eſtate reſtor'd him by the King.

The Earl formerly pardon'd himſelf.

'he maliciouſly intimated to the People, That 'the Oath was inconſiſtent with itſelf, and with 'the Proteſtant Religion; thereby miſ-repreſent-'ing his Majeſty and the Parliament in the higheſt 'Degree: And by his declaring, '*That he did not* '*mean by taking the ſaid Teſt to bind up himſelf from* '*wiſhing and endeavouring any Alteration in a lawful* '*Way, that he ſhould think fit for advancing of Church* '*and State*, he did, by his Example, invite others to 'think themſelves loos'd from that Obligation, and 'teach them, that it was lawful to make any Al-
Page 855. 'teration, either in Church or State, as they 'ſhou'd think fit: And that his Concluſion, (*viz.*) '*This I underſtand as a Part of my Oath*, was a treaſona-'ble Invaſion upon the Royal Legiſlative Power, 'as if it was lawful for him to make to himſelf 'an Act of Parliament, (for he who could make 'any Part, might make the whole.) And of theſe 'Crimes, the ſaid Earl was Actor, Act and Part; 'which being found by the Aſſize; he ought to 'be puniſh'd with the Pains of Death, *&c.*'

The Earl petitions that Sir *Geo. Lockhart* may be his Counſel.

The Earl of *Argyle* petition'd the Lords of the Council, that they would give ſpecial Order and Warrant to Sir *George Lockhart*, his ordinary Advocate, to be his Advocate in the aforeſaid Criminal Proves, which the Council refus'd, but made a general Order, that they allow'd any Lawyer, the Petitioner ſhould employ, to plead for him.

A General Order for any Counſel he ſhou'd chuſe.

Whereupon the Earl petition'd again, ſhewing, That by Act of Parliament, in caſe an Advocate refus'd to be concern'd, the Judges were to compel him; but the Council adher'd to their former Order.

Then the Earl made a Letter of Attorney to *Alexander Dunbar*, his Procurator, for requiring Sir *George Lockhart* to plead for him, and executed an Inſtrument, requiring the ſaid Sir *George Lockhart* to appear and plead for him, and caus'd it to be ſerv'd upon him.

Page 858. The Tryal comes on.

Wedneſday the 12th of *December* being appointed for the Tryal, the Earl of *Argyle* was brought into Court, the Earl of *Queensbury* being then Juſtice-General,

General, and the Lords *Nairne*, *Collington*, *Forret*, *Newton*, and *Hirkhouſe*, Lords of Juſticiary ſitting in Judgment.

The Earl having been arraign'd, and the Indictment read, he made a Speech to the Court: He ſaid, he look'd upon it as the Privilege of the meaneſt Subject, to explain his own Words, and he thought it wou'd be impoſſible to make any that know him believe he intended any Thing but what was honeſt, honourable, and loyal, tho' he did not explain himſelf; for he ſaid he had from his Youth ſerv'd his Majeſty faithfully, and in Times of the greateſt Difficulty; nor had he receiv'd a Frown from his Majeſty theſe thirty Years: That his firſt Appearance in the World was to ſerve his Majeſty as Colonel of his Foot-Guards; and after the Misfortune at *Worceſter*, and *Scotland* was over-run by the Uſurpers, he alone, with his Friends, were in Arms for the King in the Year 1652, and that he ſtood out 'till the Earl of *Middleton*, his Majeſty's Lieutenant-General, gave him Orders to capitulate: That he was forefaulted by the Uſurpers, contrary to their Faith, and kept in one Priſon after another 'till the *Reſtoration*, becauſe he wou'd not engage not to ſerve his Majeſty.

The Earl's Speech at his Arraignment.

He argues his paſt Services.

Page 859.

That when he was proſecuted by the Parliament in 1662, his Majeſty being entirely ſatisfy'd of his Loyalty, he did not offer to plead by Advocates; and his Majeſty was pleas'd to pardon his Life, and reſtore him to his Title and Fortunes, and put him in the moſt eminent Judicatories; and he hop'd his Majeſty had always found him faithful: That the next Occaſion he had to ſhew his Zeal for his Majeſty was in 1666, when the Inſurrection was at *Pentland Hills*, when he ſeiz'd all the Gentlemen in *Kintyre* that had not taken the Declaration, and ſent a Gentleman to General *Dalziel*, to receive his Orders when they were going to the Action at *Pentland*.

That he had ſhewn his Readineſs to ſerve his Majeſty, in aſſerting the lineal, legal Succeſſion of the Crown, and offering proper Supplies to his Majeſty and his Succeſſor, *&c.* and ſhou'd he now

be

be troubl'd, he ſaid, for innocent Words ſpoken, without any ill Deſign, but for the clearing his own Conſcience, eſpecially ſince many of the Orthodox-Clergy Biſhops, and whole Preſbyteries, had ſcrupled the ſame Thing, and an eminent Biſhop had writ a Treatiſe that was read over in Council, and allow'd to be printed, which contain'd the ſame Expreſſions he was charg'd with. And how could it be imagin'd, he ſaid, that he ſhou'd do any Thing contrary to the Teſt, who had ſhew'd his Zeal to all the Ends of it in the whole Courſe of his Life: There was nothing to ſupport the Charge but Words, wreſted not only contrary to his Senſe, but to his Principles, his Intereſt and Duty; and that my Lord-Advocate himſelf muſt know, from the Acquaintance he had with him, that he was neither Papiſt nor Fanatick, but truly loyal in his Principles and Practices.

He produces a Letter, wherein the King acknowledges his Services.

After this Speech, a Letter from his Majeſty to the Earl, when he was Lord *Lorn*, was read, dated at *Cologn*, *Dec.* 10, 1654, wherein his Majeſty takes Notice of his Services againſt the Rebels, and promiſes they ſhall not be unrewarded.

Page 860. And my Lord *Middleton*'s Letter to the ſame Effect.

Then the Earl of *Middleton*'s Orders to him, impowering him to capitulate with the *Engliſh*, were read, wherein he takes Notice of the great Services the Earl of *Argyle* (then Lord *Lorn*) had done his Majeſty.

The Earl of *Glencairn*'s Letter to him.

And the Earl of *Glencairn*'s Letter to him when he was Lord *Lorn*, was alſo read, wherein he teſtifies the Eſteem he had for him, and the Senſe he had of his Loyalty to the King.

Page 861. Sir *G. Lockhart*'s Argument for the Earl.

After the reading theſe Orders and Letters, Sir *George Lockhart* enter'd upon the Earl's Defence.

He alledges, that the Libel is not Relevant; for that all criminal Libels ought to be founded upon expreſs Acts of Parliament; and the Matter of Fact, libell'd to be the Contravention of thoſe Laws, muſt be direct Contraventions, and not argu'd by Way of Implication and Inference.

But more particularly, the Charging the Panel [the Priſoner] with the Crime of Leaſing-making, and depraving his Majeſty's Laws upon the Act firſt cited, tho' ſuch Explication as is pretended

was

was prov'd, is moſt unwarrantable; for upon Peruſal of thoſe Acts, they only concern the Caſe of Leaſing-making, tending to Sedition, and creating Diſcord between his Majeſty and his Subjects; and the ſaid Acts were never underſtood or libell'd upon in any other Senſe.

And nothing of that Nature can be inferr'd from the Panel's alledg'd Explication, if the whole Tenor of his Life be conſider'd; and his Majeſty, in his Letter, has ſhewn that he did ever moſt zealouſly and vigorouſly promote his Majeſty's Service; and in the Earl of *Middleton*'s Letters (his Majeſty's General) were high Expreſſions of the Panel's Loyalty, and great Services he had perform'd; and his Majeſty being conſcious thereof, had intruſted the Panel with the greateſt Employments; and it is a rational Preſumption in all Laws, that the Expreſſions of Perſons who by the Tenor of their Lives have abundantly expreſs'd their Loyalty, ſhou'd ever be interpreted in the beſt Senſe, and not by Way of Implication, to infer Crimes from the ſame which the Party never meant or intended.

And farther, theſe Words being offer'd before a publick Judicature, only to explain the Panel's Apprehenſion what he conceiv'd to be the true Meaning of the Act enjoyning the Teſt, this cou'd never be interpreted a Leaſing-making with any ſeditious Intent, or, indeed, infer any Crime, ſuppoſing he had err'd and was miſtaken in his Opinion concerning the Act of Parliament; for Men may miſtake and differ very much as to the Senſe of them, and even the greateſt Lawyers often do. And it is not ſo much as alledg'd that the Panel ever uſed any reproachful Speeches of the ſaid Act, or his Majeſty's Government, or urg'd any Thing againſt it, till he was requir'd on this Occaſion to take the Oath, and then he only offer'd what he apprehended to be the Senſe of the Act. Page 862.

And it is not only allowable by the Opinions of all Divines and the Laws of all Nations, but commendable, where the Party has any Scruple as to the Matter of the Oath, that he ſhou'd declare

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in what Senſe he is able to take it; and whether his Scruples were juſt or groundleſs, they do not caſt any Reflection upon the Juſtice or Prudence of the Parliament who impos'd it: Nor was ever ſuch a Declaration for the clearing and exonerating the Party's Conſcience, in the Opinion of any Lawyer or Divine, conſtru'd to be the Crime of Leaſing-making, or of defamatory Libels, or depraving of publick Laws, or reproaching the Government; but on the contrary, by the univerſal Opinion of all Proteſtant Divines, any reſerv'd Senſes or Equivocations are abhor'd and deteſted.

And it is offer'd to be prov'd, that before the Panel was requir'd to take the Oath in Council, many Papers were written, even by the Orthodox Clergy, and preſented to the Biſhops in the Name of the Synods and Preſbyteries, which charge the Teſt with Contradictions and Inconſiſtencies; whereupon ſome of the Biſhops wrote an Anſwer, call'd, *A Vindication of the Teſt, for clearing the Scruples, Difficulties, and Miſtakes, that were objected againſt it*; which was allow'd by the Council to be printed.

Page 863. That in the Explication pretended to be his, he does no where directly charge the Oath and Teſt to contain Matters of Inconſiſtency and Contradiction, as theſe Authors do; but the Crime is made out only by Implication and Inference, and violently wreſting his Words to a Senſe they cou'd never bear; and yet thoſe Authors were never reputed guilty of the infamous Crimes libell'd, *viz. Treaſon, Leaſing-making, Perjury, &c.*

That Papers having been diſpers'd, inſinuating that there were Inconſiſtencies and Contradictions contain'd in the Oath, the Earl, by aſſerting *That the Parliament never intended to impoſe contradictory Oaths*, was ſo far from being guilty of the Crimes mention'd in the Libel, that the ſaid Expreſſion was an high Vindication of the Honour and Juſtice of the Parliament, againſt the Calumnies and Miſrepreſentations caſt upon it; and it gave juſt Occaſion to the Priſoner to declare his Senſe of the Oath, when he found ſuch various Senſes put upon

upon it. As to that Part of the Libel founded on *Act* 130, *Par.* 8, *Jac.* 6. which makes it High Treaſon to impugn the Authority of the three Eſtates, and the Priſoner's aſſuming legiſlative Power by his Explication.

He anſwers, That Act can't affect him, for it appears to be levell'd only againſt ſuch as deny the King and Parliament to have a legiſlative Power, or that any of the three Eſtates were not eſſentially requiſite to conſtitute a Parliament; and there is nothing in the pretended Explication that has any Tendency this Way.

And it is admir'd with what Shadow of Reaſon the Earl can be charg'd with aſſuming a legiſlative Power, by declaring in what Senſe he was contented to take the Oath, it being the univerſal Practice of all Nations to admit this Liberty; and the Government might either have accepted or rejected his private Senſe, which he offer'd only for the Exoneration of his own Conſcience: Nor can he, with any more Reaſon, be charg'd with the Crime of Perjury on this Account; if they did not think the Law was ſatisfy'd by this Explication, they cou'd but adjudge him a Refuſer of the Oath; and as the Explication does not import all or any of the Crime libell'd, ſo if there were any Ambiguity in his Expreſſions, they ought to be interpreted in the moſt benign and favourable Senſe; and it was never refus'd to any Perſon to put a congruous Senſe upon his own Words, eſpecially to a Perſon of his Quality, and one who had given ſuch undeniable Evidences of his Loyalty.

That thoſe Words, *He was ready to give Obedience as far as he cou'd*, did not import the Parliament had impos'd an unlawful Oath, but only ſhew'd the Panel's Doubtfulneſs and Scrupuloſity in the Matter: And they might have argu'd much more ſtrongly, if he had abſolutely refus'd the Oath, that he ſuggeſted thereby they had enjoin'd what it was impoſſible to comply with; but, in Truth, ſuch Implications and Inferences were irrational, and there is not in either Caſe any Im- Page 864.

peachment of the Juſtice or Prudence of the Legiſlator.

As to thoſe Words, *I think no Body can explain it but for himſelf*, they imported no more than that every Man ought to take it in that Senſe he apprehended to be the genuine Senſe of the Parliament: And as to his Saying, *He takes it as far as it is conſiſtent with it ſelf and the Proteſtant Religion*, he neither intended or expreſs'd more than that he took it as a true Proteſtant.

As to that Expreſſion, *He does not bind up himſelf in a lawful Way to endeavour any Alteration he thinks for the Advantage of Church and State, &c.* he thought it cou'd never be inferr'd from the Oath, but that Perſons might, notwithſtanding, concur in their Stations, *in a lawful Way*, in any Law, to the Advantage of Church or State, and it wou'd be contrary to his Allegiance to take the Oath upon other Terms.

And by thoſe Words, *This I underſtand as Part of my Oath*, he cou'd not be ſaid to aſſume a legiſlative Power; his plain Meaning was, that this Senſe and Explication was Part of his Oath, not of the Law which impos'd the Oath: And farther, the Earl's Senſe was accepted, and he was allow'd
Page 865. to take his Place at the Council-Board accordingly; from all which he infers, that the ſaid Explication cannot import all or any of the Crimes libell'd.

The King's Advocate's Argument and Plea againſt the Earl of Argyle.

The Advocate's Argument againſt the Earl.

His Majeſty, to ſecure the Government from the rebellious Principles of the laſt Age, and the unjuſt Pretexts of the preſent, and to ſecure the Proteſtant Religion and the Crown, call'd a Parliament, wherein this excellent Teſt was reſolv'd on, as a Security againſt the old juggling Principles of the Covenant, wherein they ſtill ſwore to ſerve the King in their own Way: But the Earl of *Argyle*, by his Paper, has diſcover'd a Way to evade this Teſt, ſo as no Man ſhall be bound by it; for if a Man ſhall ſwear to obey only as far

as

as he can, and as far as he conceives it consistent with the Protestant Religion, and with it self, and reserve to himself a Power of making any Alteration he shall think consistent with his Loyalty, what Man can be bound? The Government must be as insecure as before the Act was made; the Taker is no farther oblig'd than he pleases; but every Man's Conscience (which in this Age includes Humour and Interest) must be the Rule of the Taker's Obedience.

By the 107th Act, *Par. 7. Jac. 6. No Man is to interpret the Statutes otherwise than the Makers understood*; but here the Taker will put his own Sense upon them, which if it be allow'd, he can never be punish'd for Perjury; if he shou'd be charg'd with making Alterations contrary to his Oath, he might say he only took the Oath so far as it was consistent with the Protestant Religion, and with a *Salvo* that he might make any Alteration he thought consistent with his Loyalty; for in these Generals he reserves to himself a Power of judging what is consistent with the Protestant Religion and his Loyalty; and this is, indeed, a very fine Security for a Government: We are not only hereby absolv'd from this Oath, but it shews us how we may be absolv'd from all Oaths, and all Obedience, and strikes at the Root of every Law as well as this.

It is the Opinion of all Divines and Lawyers, that every Oath is to be taken according to the Intention of him to whom it was made; nor was there any Danger to a tender Conscience in this Case, since there was no Force put upon the Earl, but he took it for his own Advantage, and might have abstain'd. Page 866.

And the Earl is clearly guilty of Contravention of the 10th Act, *Par.* 10. *Jac.* 6. prohibiting the writing any Thing whereby his Majesty's Government is reproach'd, or his Proceedings misconstru'd, so as to create a Dislike between the King and his People; for by his saying he takes the Oath only as far as it is consistent with it self and the Protestant Religion, it must necessarily be concluded, that in several Instances it is inconsistent

with it ſelf and the Proteſtant Religion; and can any Thing be a greater Reproach to the Parliament, or a greater Ground of Miſlike among the People?

And whereas tis ſaid theſe are only Inferences, it is anſwer'd, there are ſome Offences which the Law can only forbid in general, and there are many Inferences wich are as ſtrong and natural, and reproach more effectual than the plaineſt Defamations in the World; direct Reproaches have not wounded the King ſo deep as the many ſeditious Inſinuations of this Age and the laſt.

There are ſo many various Methods of Slander and Reproach, that it is impoſſible they can be ſpecify'd in any Law; and in all the Laws concerning Leaſing-making, the Judges are to conſider what comes under the general Words: Now from this Paper it muſt be inferr'd that the Parliament has made a very ridiculous Oath, inconſiſtent with it ſelf and the Proteſtant Religion; that is the natural Tendency of the Words, they will admit of no other Senſe; and ſhall a Man be permitted, under Pretence of exonerating his Conſcience, to defame the Government? Have we not ſeen the King moſt defam'd by Covenants, enter'd into upon Pretence of making him great and glorious, by Remonſtrances made to take away his Brother and beſt Friend, on Pretence of preſerving the Proteſtant Religion and his Sacred Perſon: Thoſe of the laſt Age declar'd *they thought* themſelves bound in Duty to obey the King *as far as that could conſiſt with their Regard to the Proteſtant Religion and the Laws and Liberties*, which render'd all the reſt ineffectual.

Page 867. And whereas it is ſaid there were other Explications of the Teſt diſpers'd about before the Earl offer'd his, and that the Council it ſelf gave an Explication of it, I anſwer, If this Paper be Leaſing-making, or miſconſtruing his Majeſty's Proceedings, and treaſonable, as is charg'd, a thouſand Offences of the ſame Kind won't excuſe it: And in the Proſecutions of thoſe who were concern'd in the late Rebellion, it was not admitted as a Defence, that the Nation was over-run with theſe Crimes, and they were thought Duties in thoſe

Days;

Days; the Example of Multitudes is no Excuſe, nor does the Council's cauſing an Anſwer to be written to thoſe Explications of the Teſt ſhew they allow'd of ſuch Explications as reflected on the King and Government, but that they condemn'd them: And as for the Council's hearing and allowing the Earl's Explanation, it was fit they ſhou'd conſider of it before they order'd a Proſecution, nor cou'd their Allowance hinder the King's calling him to an Account.

Tho' Divines hold a Man ought to ſwear without any Evaſion, they do not ſay he ſhou'd ſwear ſo as to be bound to nothing, as the Earl contends: If the Earl had not been clear he ought to have abſtain'd, or Men ſhou'd tell, in plain Terms, in what Senſe they are bound to the State, and not uſe ſuch ambiguous Expreſſions as are a thouſand Times more doubtful than the Teſt it ſelf, and is, in Effect, nothing but what the Taker pleaſes.

And as it is Treaſon to endeavour any Alteration of the Government, either in Church or State, by a private Perſon, tho' he think it for the Advantage of both, this the Earl is juſtly charg'd with; for he does not ſay ſuch Alterations as the King ſhall think fit, or are conſiſtent with the Laws and Statutes of the Realm, but any ſuch *as he ſhall conceive to be lawful*; ſo that he is the ſole Judge of this, and his Loyalty to be the Standard; nor did the Covenanters in the laſt Age, or thoſe who are daily executed now, deny they ought to obey the King, but they ſay they are bound to obey the King no farther than as his Commands are conſiſtent with the Laws of God and Nature, and of this Kingdom, and with the Covenant; their Treaſon lies in this, and when you aſk them who ſhall be Judge of this, they ſtill make themſelves the Judges.

Your Lordſhips of Juſticiary will conſider how dangerous it will be to this Kingdom, and how ill it will ſound in other Kingdoms, that Men ſhou'd be allow'd to reſerve to themſelves the Liberty of making any Alteration they think fit in Church and State, as to the Legality whereof they Page 868.

themſelves are to be Judges; we ſeem to have the Steps of our rebellious Progenitors, whoſe great Defection and Error was, that they thought themſelves, and not the King, the Authors of Reformation both in Church and State.

As to the Perjury, the Earl being bound by the very Oath to ſwear in the genuine Meaning without any Evaſion, he has ſworn ſo as to evade every Word; and ſince he has not ſworn in the Senſe of the Makers of the Law, but his own, he is guilty of Perjury.

Sir John Dalrymple's *Defence and Plea for the Earl of* Argyle, *by Way of Reply to the King's Advocate.*

Sir John Dalrymple's Reply in Behalf of the Earl.

It cannot be pretended that the Scruples which have been mov'd concerning the Teſt, did ariſe from the Panel's Explication; for the ſame Difficulties were propos'd by Synods and Preſbyteries long before the Panel was requir'd to take the Teſt: The Laws relating to Leaſing-makers relate only to atrocious and wilful Inſinuations or Miſconſtructions of his Majeſty's Perſon and Government, or the open depraving of his Laws; the reſtrictive Words are, *Whereby Seditions or Miſconſtructions may be mov'd, rais'd, or engender'd, betwixt his Majeſty and his Lieges*; now all theſe Apprehenſions and Scruples being on Foot, and agitated long before the Panel's Explanation, cannot be apply'd to this Caſe.

And farther, there is not one Word contain'd in this Explanation but either the very ſame, or much worſe, had been publickly propos'd and read in Council before, without the leaſt Diſcouragement or Objection to them; and they having been univerſally approv'd in ſo high a Court, how can it be pretended that a Perſon having uſed the ſame Terms, or more inoffenſive, ſhou'd incur the high and infamous Crimes libell'd thereby.

Page 869. Nor did the Panel officiouſly offer his Senſe of the Law, but being enjoin'd by an Act of Council, and cited to that Purpoſe, he was oblig'd either to have refus'd the Teſt, or to declare what he thought the genuine Meaning of it, there being

ing many Objections againſt it. His Explanation tended to ſhew that he did not look upon them as well grounded, but that he was ready to take it in that Senſe the Council had heard and allow'd: It is not diſputed but that Laws and Oaths ought to be taken in the Senſe of the Legiſlator, and when a Man comes to take an Oath, except his particular Senſe agree with the genuine Meaning of the Impoſer he cannot take that Oath; therefore where a Man is bound to take an Oath, if he gives in an Explication of the Senſe which he, in his private Judgment, apprehends to be the genuine Meaning, if his private Senſe does not agree with the Legiſlator's Senſe, then the Impoſer of the Oath, or he that has Power of tendering it, ought to reject him, as not fulfilling the Intent of the Law; but the Party can run no farther Hazard, or incur any other Penalty than what is impos'd on a Refuſer: And where a Man takes an Oath in the Senſe propos'd by Authority, and this is contrary to his own Senſe, he is perjur'd; and had the Panel been of thoſe looſe Principles, that he might have evaded the Meaning and Energy of the Oath, by putting upon it what Senſe he pleas'd, he wou'd have contented himſelf in the general Refuge of Equivocation or mental Reſervation, and never have ſignify'd the Senſe in which he took it, whereby he became abſolutely fix'd to that particular Senſe.

Oaths to be taken in the Senſe of the Impoſer.

Whoever takes an Oath in a Senſe contrary to the plain Meaning of the Impoſer is perjur'd.

It is acknowledg'd that a Perſon is guilty of Perjury, *ſi aliquo novo Commento* he wou'd elude his Oath, or does not fulfil it in the Senſe of the Impoſer; but here the Party, before he takes the Oath, declares the Terms in which he underſtood it, which is not *aliquo novo Commento* to elude it: Here the Panel publickly declares what he underſtood the Meaning of Authority to be, and had Grounds to believe he was not miſtaken, when upon that Explanation he was allow'd to ſit and vote in Council. It is admitted that the aſſuming a Power to make Laws is treaſonable; but altho' the Panel declares his Fxplanation to be a Part of his Oath, he never meant to impoſe it as Part of the Law; and the Panel having declar'd

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this Explanation was *de natura rei*, imply'd in the Oath, he neceſſarily made this Explanation no Addition or Extention of the Oath, but a Part of the Oath.

As to thoſe Words, *I do not mean to bind up my ſelf in my Station, and in a lawful Way to wiſh and endeavour any Alteration, I think, to the Advantage of Church or State, not repugnant to the Proteſtant Religion and my Loyalty.* This Clauſe is ſo far from being treaſonable, that every good Subject ought to ſay as much. The Words *lawful Way* ſhew, That by Alterations cou'd not be underſtood treaſonable Alterations, but ſuch Alterations as the Frailty of Human Affairs and Conſtitutions, and the Viciſſitude of Things conſtantly require in the moſt compleat Conſtitutions: It is a rational Proſpect; for if every Thing at preſent were done that could be done, for the Security of Religion and Government, there may occur Caſes hereafter, that may require new Remedies and Alterations: Nor is there any Thing in the Panel's Explanation, that being rationally and naturally interpreted, can infer the Crimes libell'd, or any of them: And his known Principles and Practices do not only clear the Panel's Innocence, but place him beyond the Suſpicion of ſuch damnable Principles of which he has the greateſt Abhorrence and Deteſtation.

And what Affront is it to the Government, that the Parliament have impos'd an Oath which the Panel is not able to take ſimply? It is not pretended, he has written or ſpoken againſt it, but only he has not been able to diſcern the Grounds on which it may be ſimply taken, which rather implies a Want of Senſe, than any Crime. As to the laſt Words, *In ſo far as it is conſiſtent, &c.* he means no more, than that the Parliament did not deſign to impoſe Contradictions; therefore, ſays he, I take the Teſt as conſiſtent, and it muſt be conſiſtent, if the Parliament did not impoſe Contradictions, as certainly they did not. In this Senſe this Explanation was propos'd in Council, and allow'd, and therefore cannot now be charg'd on him as Criminal.

Sir

Sir George Lockhart's *Second Plea for the Earl of* Argyle, *by Way of Reply to the King's Advocate.*

Sir *George Lockhart's* Reply in Behalf of the Earl.

Notwithstanding, the Oath was impos'd (as 'tis said) for the Security of the Government, and the Panel, by his Explication, as is pretended, does evade this Oath, by taking it only so far as it is consistent with the Protestant Religion and his own Loyalty, whereof he is the Judge; the Security of the Government is not at all endanger'd, tho' the Panel and a thousand more had simply refus'd the Test, or taken it in a Sense which does not satisfy the Law; for it is in the Power of Authority to consider, whether the Panel's Explication does satisfy the Act or not; and if not, nothing can be inferr'd, but that he is a Refuser of the Oath, and liable to the Disabilities in the Act of not undertaking a publick Trust: The Parliament design'd no more, than to make this the Qualification of such as were to be admitted to any publick Office, and not that the Party refusing, shou'd incur any farther Penalty.

It is also insisted, that this was never accounted a Crime in others, who publish'd their Scruples and Objections against it in higher Terms; and the Lords of Justiciary are desir'd to take special Notice, that the Panel was cited to take the Oath before the Council publish'd their Proclamation for explaining it, wherein they declare, that it did not oblige to the whole Articles of *the Confession of Faith*, ratify'd by the Act of the 6th of *Jac.* several Articles whereof had occasion'd the Scruples and Difficulties, and alledg'd Inconsistency and Contradiction between the last Part of the Oath and the said Confession, and between some of these Articles and the Current of the Protestant Doctrine; therefore, if the Panel for the clearing and exonerating of his Conscience, thought it necessary to use the Expressions in the Explication Libel, and yet with so much Duty and Confidence of the Parliament's Justice, *that they never intended to impose contradictory Oaths; and that he took it as far as it*

it was consistent with the Protestant Religion; not knowing then whether the whole Confession was to be reputed a Part of the Oath, and doubting concerning it, and which the Council thought since to be so great a Difficulty, as that it was necessary to clear it by publick Proclamation: How can this Court now believe, that all, or any of the Crimes libell'd, shou'd be inferr'd from all or any of the Expressions contain'd in the said Explication? But that on the contrary, the Panel's Scruples were just, and his Explication agreeable to the Law and Custom of all Nations, where the Party has any Scruples as to the Matter of the Oath enjoin'd: If his Sense did not agree with that of Authority, they cou'd but hold him as a Refuser of the Oath, but were not to look upon him as Criminal, or a guilty Person.

The Panel also offers to prove, that this Explication was agreeable to that Vindication of the Oath, written by the Bishop of *Edinburgh*, in Answer to the Objections and alledg'd Inconsistencies in it, which was publickly read in Council, and so far approv'd of, as to be permitted to be printed and publish'd.

And whereas 'tis pretended, that the Acts against Leasing-makers, and Depravers of his Majesty's Laws, take Place, where any Words or Expressions have a Tendency in themselves, or by Consequence or natural Inferences do reflect upon the Government, or mis-construe the King's Proceedings, and that the Explication was such.

It is answer'd, that the 43d *Act*, *Par.* 8. *Jac.* 6. and the other Acts against depraving his Majesty's Laws, do require, that such Speeches be perverse and licentious Speeches; *ex natura sua probrosa*, and spoken *animo defamandi*, and such as will not admit of any other rational Construction which cannot be apply'd to this Case, and neither Law or Reason will infer or presume a Crime, where the Thing is capable of a fair and rational Construction, and where it is done publickly, in Presence of his Majesty's High Commissioner and Lords of the Council, of whom the Panel was a Member, (Persons intending to commit such

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Crimes,

Crimes, making Uſe of other Times and Places, and other Company, where their Suggeſtions and Inſinuations may more probably prevail.) It can never be ſuppos'd, that a Perſon of the Panel's Quality, and one who had the Honour to ſerve his Majeſty in the moſt eminent Stations, and receiv'd ſuch tranſcendent Favours from him, ſhou'd, in the Preſence of his Royal Highneſs and the Council, deſign to declare againſt and defame his Majeſty's Government: Neither Law nor Reaſon will preſume this.

As to *Balmerino*'s Caſe, which has been cited, it was certainly a defamatory Libel on his Majeſty's Royal Father, and the States of Parliament, in the higheſt Degree; wherein he ſuggeſted, that there were Innovations in the Proteſtant Religion, and that the Liberties and Privileges of Parliament were deſtroy'd, and other Things of that Nature, containing the higheſt Crimes of Treaſon and Perduellion, and were not capable of any good Senſe or Interpretation; and his Prefaces and Profeſſions of Loyalty were not indeed to be regarded in that Caſe.

As to thoſe Words, *That he is not bound up by any Thing in this Oath not to endeavour any Alteration in a lawful Way*, it were ſtrange, if an Act, deſign'd for the Security of the Government, ſhou'd bind up Mens Hands not to concur to its Advantage; and whereas it is pretended there was the like Clauſe in the Covenant, that is a Miſtake; and if it had been ſo, the Argument is altogether inconſequential; for the Covenant was treaſonable in itſelf, being enter'd into without his Majeſty's Authority, and treaſonable Gloſſes were put upon it: And how can the Panel be ſuppos'd to have any Reſpect to the Covenant, who had ſo often taken the Declaration, diſowning and renouncing it as an unlawful Oath, and concurr'd in many Laws which condemn it as ſeditious and treaſonable.

The Earl had renounc'd the Covenant.

And whereas 'tis pretended, that the Panel is guilty of Perjury, having taken the Oath in a Senſe different from that of the Parliament, who impos'd it. It is anſwer'd, Perjury can never be inferr'd,

inferr'd, but by the Commiſſion or Omiſſion of ſomething directly contrary to the Oath: 'Tis true, where an Oath is taken without any Declaration of the Senſe of the Party that took it, it obliges *ſub pœna Perjurii*, in the Senſe not of the Taker, but of the Impoſer of the Oath; becauſe, expreſſing no Senſe, both Law and Reaſon preſume there is a full Acquieſcence in the Senſe and Meaning of the Impoſer; and then, if the Oath be not ſo taken, he that takes it, is guilty of Perjury. But no Man will affirm, if the Party, before he takes the Oath, declares, in expreſs Terms, the Senſe in which he takes it, that he can be guilty of the Crime of Perjury in any other Senſe; for all Proteſtant Divines do adviſe, in the Caſe of a doubting or ſcrupulous Conſcience, that they do expreſs and declare the Senſe wherein they can take it, and do abominate all Subterfuges and Evaſions after taking the Oath.

The King's Advocate's third Plea againſt the Earl of Argyle.

The King's Advocates 3d Plea againſt the Earl.

His Majeſty's Advocate conceives he has nothing to reply to, unleſs it be that Objection, That the Act was deſign'd only to exclude Recuſants from Offices, not to make them guilty of any Crime.

To which he anſwers, That is true, where one ſimply refuſes; but this does not excuſe the Earl for defaming the Law: He is not to be puniſh'd for refuſing, but for defaming: If he had ſimply refus'd, the Government had been in no Hazard; but he would retain his Places, and take the Teſt in ſuch Words as give the Government no Security.

It is his defaming the Law, as rediculous and inconſiſtent with the Proteſtant Religion, and creating Miſ-underſtandings between the King and his People, that puts the Earl in a worſe Condition than him who ſimply refuſes.

As to the Proclamation that was publiſh'd, it was deſign'd to obviate the Scruples of the Ignorant, and not for Members of Parliament, who ſhou'd have known the Senſe of their own Acts.

And

And it is conceiv'd, the Article of Treaſon is well grounded upon the Common-Law, which prohibits all Men to make any Alteration in the Government, and there needs no Statute for it: Had the Earl reſerv'd a Power of propoſing to his Majeſty any Alterations, or of concurring with his Majeſty in any Alterations, he might have done this very innocently; but giving himſelf that general Liberty of wiſhing and endeavouring any Alteration *he ſhould think fit*, for the Advantage of Church or State, was the Crime; nor wou'd the Word *Lawful* make the Matter better; for the greateſt Rebel in *Scotland* will bind himſelf to a lawful Obedience, provided he may be judge of the Lawfulneſs: The Covenant itſelf has not only the Words above cited, but they call the World to be Witneſſes of their Loyalty and Sincerity. The Loyalty of the Covenanters.

As to riſing in Arms, or oppoſing a lawful Succeſſor, not a Covenanter in *Scotland*, but will ſay, *He will not do either, but in a lawful Way, and in his Station, and as it be conſiſtent with his Loyalty*; but when they come to explain it, they will only do it as they think fit; they will be Judges themſelves, and tell us, that defenſive Arms are lawful, and that no Popiſh Succeſſor ought to ſucceed, or any Succeſſor, unleſs he ſubſcribe the Covenant.

And whereas 'tis ſaid, the Panel does not deſign to add any Thing as a Part of the Law, but as a Part of his Oath; it is anſwer'd, Since the Oath is Part of the Law, adding to the Oath, is adding to the Law.

And whereas 'tis ſaid, the Crime of Perjury cannot be inferr'd, becauſe 'tis allowable to declare in what Senſe the Party takes it; that is true, where there are two dubious Senſes, and he declares he takes it in one of them; becauſe to whichſoever of the two he determines himſelf, the Legiſlature, in that Caſe, are ſure of him; but 'tis not pretended here are two Senſes, or indeed that the Panel takes it in any certain Senſe; he does not ſpecify what particular Clauſe is doubtful, but in general myſterious Words, wherein he Page 874.

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can neither be follow'd or found out; he only takes it so far as it is consistent with itself and the Protestant Religion, squaring all by his own Loyalty: At this Rate, the Government is not secure of any Thing it enjoins; or can the Panel ever be punish'd as a Transgressor: And farther, Perjury may as well be inferr'd by an equivocal evading Sense, *inter Jurandum*, as well as by breaking the Oath afterwards, as appears from *Sanderson*, *p.* 138. And if Men are allow'd to put such Glosses upon an Oath, even while they swear, as to render it useless, how shall either Government or Commerce be maintain'd? And that this Interpretation eludes the Oath absolutely, has been made appear.

And the Earl may be said to have broken his Oath the first Day he swore it, when he said he took it without any Evasion, and yet the next Day gave in this evasive Explanation, which is inconsistent with it: And it was the greater Crime that it was done in Council, because that was to make it more publick, and consequently the more to mis-represent the Government.

This Debate having lasted twelve Hours, the whole, according to Custom, having been taken by the Clerk in Writing, the Court adjourn'd to the next Day.

Edinburgh the 13th of *December*, 1681.

The Court sustain the Earl's Defence as to the Perjury.

The Court sustain the Earl's Defence, as to Perjury, having offer'd his Explanation before he took the Test.

But find the Indictment sufficient, as to the Treason, &c.

But they sustain the Libel as to the Treason, and other Crimes libell'd, and the following Jury was sworn.

The Jury consist of 15 Peers and Commoners.

Marq. *Montross*,	Lord *Lindoors*,
Earl *Middleton*,	Lord *Sinclare*,
Earl *Airlie*,	Lord *Buntisland*,
Earl *Perth*, P. C.	Laird of *Godford*,
Earl *Dalhousse*,	La. of *Claverhouse*,
E. of *Roxburgh*, P.	La. of *Balnamoon*,
Earl of *Dumfries*.	Laird of *Park-*
Earl of *Linlithgow*, P. C.	*Gordon*.

The Witneſſes were John Drummond *of* Lundie, *Sir* William Patterſon, *Mr.* Patrick Menzies, *and* H. Stephenſon. The Evidence.

They depos'd, That the 4th of *November*, the Earl gave in an unſubſcrib'd Explanation of the Teſt, which he refus'd to ſign; and one of the Witneſſes depos'd farther, That he heard him make the ſame Explanation the Day before in Council; and that it was there accepted.

His Majeſty's Advocate demanded, if the Earl wou'd make Uſe of his Exculpation for eliding the Perjury? He anſwer'd, That ſince they had ſuſtain'd the Libel, as to the alledg'd Treaſon, he wou'd not trouble them about the Perjury; and beſides, he thought that Matter clear enough of itſelf.

Then the Advocate taking Inſtruments, proteſts for an Aſſize of Error, in caſe the Aſſizes (the Jury) ſhou'd aſſoil or acquit; whereupon the Aſſizes withdrew, and after ſome Time return'd into Court, and their Verdict was read, (*viz.*) The Advocate proteſts for an Aſſize of Error, if the Priſoner ſhou'd be acquitted.

The Aſſize having elected and choſen the Marqueſs of Montroſs *to be their Chancellor.* [Foreman] *They all, in one Voice, find the Earl of* Argyle *guilty, and culpable of the Crimes of Treaſon, Leaſing-making, and Leaſing-telling; and find, by Plurality of Votes, the ſaid Earl innocent, and not guilty of Perjury.* The Priſoner convicted of all but the Perjury.

After which the Court adjourn'd, and the Council ſent a Letter, dated the 14th of *December*, 1681, to his Majeſty, acquainting him with the Verdict againſt the Earl; and ſignifying, that it was uſual, and would be for the Service of his Majeſty, that Sentence be pronounc'd thereupon; and that afterwards his Majeſty might command Execution to be ſtay'd, and do as in his Clemency he ſhou'd think fit. The Council inform his Majeſty of the Proceedings.

To which his Majeſty gave an Anſwer dated the 18th of *December*, authorizing them to grant a Warrant to the Juſtice-General, *&c.* to pronounce Sentence againſt the Earl; but that all Execution ſhou'd be ſtay'd, 'till his farther Pleaſure was known. His Majeſty directs them to proceed to Sentence.

Before

The Earl escapes.

Before the Letter arriv'd from his Majesty, the Earl had made his Escape; and it being read in Council, it was debated whether the Court cou'd proceed to pronounce Sentence in the Absence of the Earl; and after some Hesitation, it was resolv'd they might.

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And the Lords of Justiciary, notwithstanding a Petition from the Countess of *Argyle* to defer it, pronounc'd the following Sentence, which was afterward publish'd at the Market-Cross.

The Court pronounce Sentence in his Absence.

'Forasmuch as it is found by an Assize, that '*Archibald* Earl of *Argyle* is guilty and culpable of 'the Crimes of Treason, Leasing-making, and 'Leasing-telling, for which he was detain'd in 'the Castle of *Edinburgh*, out of which he has 'now, since the said Verdict, made his Escape; 'therefore the Lords Commissioners of Justiciary 'discern and judge the said *Archibald* Earl of '*Argyle* to be execute to the Death, demain'd as 'a Traytor, and to underly the Pains of Treason, 'and other Punishments appointed by the Laws 'of this Kingdoms, when he shall be appre-'hended, at such a Time and Place, and in such 'Manner as his Majesty, in his Royal Pleasure 'shall think fit to declare and appoint: And his 'Name, Memory, and Honours to be extinct, 'and his Arms to be riven forth, and delete out 'of the Books of Arms, swa that his Posterity 'may never have Place, nor be able hereafter to 'bruick or joyse any Honours, Offices, Titles, or 'Dignities within this Realm, in Time coming, 'and to have forefaulted, amitted, and tint all 'and sundry his Lands, Tenements, annual Rents, 'Offices, Titles, Dignities, Tacks, Steedings, 'Rowmes, Possessions, Goods, and Geeze what-'sumever pertaining to him, to our Sovereign 'Lord, to remain perpetually with his Highness in 'Property.——*Which was pronounc'd for Doom, the* '23*d of* December 1681.

After the Reading and Publishing whereof, the Earl's Coat of Arms, by Order of the Court, was also torn and ranvers'd, both in the Court and at the Market-Cross.

The End of the Second Volume.

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